

THE EXACT
CONSTABLE,

WITH HIS
Original, and Power in all
Cases belonging to his OFFICE.

AS ALSO

The OFFICE of *Church-wardens*,
Overseers of the Poor, *Surveyors of the*
High-ways, *Treasurers of the County Stock*,
Parish Clerks, *Governors of Fairs*, and other
inferiour Officers, as they are at this day esta-
blisht both by the *Common Laws* and *Statutes*
of this Kingdom.

By *E. W. of Grays-Inne, Esq;*

The Fifth Edition.

Whereto is Added,
The Office of a *London* Constable.


Non Nobis solum nati sumus, sed partim PATRIÆ.

L O N D O N,

Printed for *Henry Brome*, *Thomas Passenger*, and
Thomas Sawbridge, 1680.

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2-JUL-1918
OXFORD

TO THE
READER.

 Hough it may seem *Actum A-*
gere, a vain and impertinent
attempt to load you with this
Treatise, when others are, or at
least have been abroad, carrying the face of
the same design, yet we think fit to remind
thee (Courteous Reader) that as the first Edi-
tion of this present Book, was the first of this
nature that was published after his Majesties
happy Restoration, so for its briefness, plain-
ness, and soundness in what it delivered, it
met with no ordinary welcome in the world;
witness the several Editions thereof already
disposed of.

To the Reader.

wherefore that so useful and necessary a Guide might not be wanting to our honest-minded Country men, for their directions in those Offices, whereunto their course of life may render them liable, we have not only thought fit to Reprint it, but have also very carefully, and with much pains revised the same, in every part supplied the Authorities where they were wanting, and Rectified them where they were misquoted: Illustrated it with a clear and apt Method, and Enriched it with requisite Additions of several sheets; so that we doubt not but it will be found not inferiour to any extant, but rather in many things to exceed whatever has been written on this subject, especially in plainness, wherein all endeavours have been used to suit it to the understandings of the meanest Capacities, and yet to ground it on such Authorities by a diligent Collection out of the Books of Statutes, Reports and other Authentique Law Books, that nothing relating to any of these Offices necessary to be known, might be omitted, nor any thing False, Repealed; or Illegal should herein be Inserted.

And

To the Reader.

And thus, dear Country-men, I deliver it thus polish'd and refined into your hands, as a Looking-glass, where you may view your several Offices in their lively legal Colours and full proportions: That ye may in all such Cases know your Duties, and knowing them accordingly, do them without fear, favour, prejudice, or affection, wherein you shall do God much service, your Country much good; and that this may be the fruit of my Labours herein, is the prayer of the Compiler, who has no other design than to cast in his Mite towards establishing the Admirable Government of this Nation, and contribute his Assistance to all those Loyal and Active Subjects who conform to, and act under the same. Farewell.

1785

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THE EXACT
CONSTABLE, &c.

CHAP. I.

*Of the Nature and Original of the
Constables Office ; the several
Names and Kinds of Constables;
and how they differ in Power.*

IN all Exact Treatises on
any Subject, the Laws
of good method require
us to begin with the
Etymology of the word,
and Definition of the thing intended to
be discoursed of; To set forth the Na-
ture, Duty, and Power of the Constables
Office, is our present scope, and there-
fore first let us consider the Name.

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The
Name
(1.) *Skin-*
ner in
Etym.
Verb.
Constable.

(2.) Co.
4. Part
Instit. fo.
123.
Lambard,
fol. 5.

Constable (in Law. Latin *Constabularius*) some will have so called (1.) *quasi Comes stabuli*: but that seems not to bear any resemblance with the *Nature* of this Office; others more lucky Gheffers think it comes of the Particle *con* and *stabilis*, as being such Civil Ministers as together conduce very much to the *stability* and quiet of the whole Nation: But certainly, 'tis both improbable and vain to hunt for a *Latin* Pedigree, for a word no less a stranger to the *Roman* Language, than the Office it self to their Government: For in truth both name and thing are Natives of this Kingdom; the Title being compounded of two *Saxon* words (2.) *Cuninge* or *Cinge*, signifying a *Prince* or *King*, and *Stable* (or rather *Staple*) denoting a *Prop* or *Stay*, and so *Conningestable* (by Contraction *Constable*) is as much as to say the *Prop* or *Stay* of of the *King*; which suits very well with his place and Duty: For what can more *establish* the Throne, or better *under prop* and support the Government, than care to *preserve the Peace* in in all places, and *seize* those that attempt to *violate it*.

And for the better warrant of this
Etymo-

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Etymology, it is to be noted (3.) That (3.)
 antiently there was a grand Officer of State, called *the High Constable of England*, to whom this Title was originally given, by reason of the great Authority wherewith he was invested, and though afterwards that haughty Office was laid aside, as being apprehended too great and dangerous to be continued. Yet from thence the name is derived to this day, and though divided amongst many, and shining with less lustre and authority; yet still it bears the same Appellation, and some marks of that illustrious Descent.

Lamb.
 Ibidem.
 St. 13. R.
 2. Ca. 12.

As for the time of the first Institution of Constables, 'tis commonly referred to the Statute of *Winchester, Ca. 1.* (made in the 13. year of K. *Edw.* the First, *Anno Dom.* 1285.) Others suppose them erected not till about the beginning of the Reign of K. *Edward* the Third: But in truth it may be said;

The Original.

— *Caput inter Nubila condit,*

For the Authority by those Statutes (4.) was grounded and granted upon the antient Laws and Customs of this Kingdom, practised long before the *Norman Conquest*, and intended and instituted for the Conservation of the

(4.) Vi-
 de Bacon.
 Cases of
 Tr. p. 22.

A 5 Peace,

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Peace, and repressing all manner of Disturbances and hurt to the people.

Wherefore for the better Understanding of the nature of this necessary Office, we must look back and take a view of that policy of our prudent Ancestors, which first introduced it; which was this, When the Heptarchy (or Seven petty Kingdoms formerly in this Island) came to be reduced to one Empire, and pay Allegiance to a single Scepter; For the better Preservation of the Peace, preventing Thefts, and repressing Malefactors, it was agreed and ordained (5.) That all the Inhabitants should cast themselves into distinct Societies, by ten men, and their respective Families in a Company: And that every of these ten men should be surety and pledg for the good behaviour of the rest: So that if any one of them committed any Crime, they should see him forth-coming, or in default thereof be amerced; and thence these several Societies come in some places to be called (at this day) *Boroughs*, or rather *Boroes*, from the old word *Borbes*, signifying pledges or sureties: And in other parts (from the number of ten Families thus associated) *Tithings*;

(5.)
Lambar.
p. 6.

ings ; And such as were of Ill Credit, and could not get themselves accepted in some such *Boroe* or Tithing, were to be esteemed dangerous persons , unworthy of Society, and where-ever they were apprehended, as Vagrants to be secured in Prison.

And as ten times ten amounts to an hundred, so ten of these smaller Companies being joyned , and at certain times meeting together on business of importance, concerning them all ; such general Assembly, or Court, and the precinct thereunto belonging , came to be called a *Hundred*, and retains the same name to this day.

Likewise it being often necessary for each of these Tythings or *Boroes* to chuse and prefer one of their number to act and speak for, and on the behalf of them : All such person was therefore in some places called, the *Boroes Ealder* (whom to this day in *Kent*, we call *Borsholder*) in other places the *Boroe's head*, or *Headboroe*, and in some, the Chief Pledg, which explains both the other names ; for all three are of one Signification.

Now as touching the Office , that these *Borsholders*, Tythingmen , Head-

Tything-
men, &c.
compared
with Con-
stables.

boroughs,

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boroughs, and chief Pledges had, it was after a sort, and is still, where they remain, in effect the same with the Office of a Constable of a Town or Parish, which seems afterwards to be established upon a greater Increase of Inhabitants: for as after the division of the Land into Shires or Counties, the Charge of the whole County was primarily committed to the Sheriff; but as the people grew more numerous, it being found too much for one Officer to inspect and govern so many; therefore in every Hundred there was one ordained with Authority to keep the Peace, who was called the *High Constable*; so afterwards the multitude being still augmented, for better assistance there came likewise to be one such *Conservator* of the Peace annually appointed in every *Boroe*, whom by reason of the smallness of his Precinct (for his power therein, is as great as the *High Constables*) they called, *the petty Constable*; Yet some maintain, That the Office of Constable is essentially distinct from those of Tything-men, Headboroe, &c. Concerning which, it is our humble Opinion, That these Tything-men, &c. if they happen to be
in

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in a precinct, where there is also a Constable, there such Constables are the Head-Officers, and they are but as Assistants to the Constable when he is present, but are to attend the Service in his absence: And when there is no Constable, but only such Tything-men, &c.

Then (6.) they are the only Officers for the Peace, Execution of Warrants, &c. Or where a Statute impowers them by name as well as Constables, or orders any thing to be done by the *Constable or other inferiour Officer*, in such Cases and things their Offices and Authority are in a manner one and the same (*mutato nomine*) with that of Constable; so that upon the whole matter, all these Officers may seem fitly enough to be comprehended in this one word Constable, and all their Offices to fall in with, and be contained under, that Office. And accordingly for avoiding tediousness, and an impertinent Clutter of words, we shall handle them promiscuously in this discourse.

(6.) Vid. Dalton. J. P. Ca. 1. p. 4. St. 1. Jac. C. 7.

From what hath been said, we may safely affirm with Mr. Lambard, That on a Constable is the Kings Majesties immediate Officer, for the support and maintenance of the peace within his Franchise:

Or

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Or perhaps more properly, *That he is a Civil Officer appointed for the maintenance of the Peace, and putting in Execution the Warrants and Precepts Issuing out of Court Leets, from Justices of the Peace and Coroners within the Precinct or Liberty for which he serves.*

Two
Kinds.

(7.) C. T.
p. 22, and
30.

Of Constables (as hath been intimated) are two sorts, High-Constables and Petty-Constables; the first are for the whole Hundred, the last only for some particular Parish, Village, Hamlet, Tything, Borough, or Liberty, yet (to use the words (7.) of the Learned Sir Francis Bacon) though the High-Constables Authority hath the more ample Circuit, I do not find that the Petty Constable is subordinate to him for any Commandment that proceeds from his own Authority : But it is used, That the Warrants and Precepts of the Justices be delivered unto the High-Constables, who being few in number, may better attend the Justices, and then the High-Constables, by vertue of such Warrants (not their own Authority) make their Precepts over to the Petty Constables : And therefore, I doubt, the High-Constable was *ab origine*; but when the business of the Country

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Country encreased, and the Authority of Justices of the Peace became encreased by divers Statutes, then for convenience-sake the Office of High-Constables grew in use for receiving the Commands and Precepts from the Justices, and distributing them to the petty Constables as aforesaid: And in Token of this the Election of High-Constables in most parts of the Kingdom, is by the appointment of the Justices of the Peace (most usually at their General quarter Sessions, or sometimes at petty Sessions in their several Divisions) whereas the Election of petty Constables is by the people.

CHAP. II.

where Constables are to be chosen, who are liable to serve that Office, and who not, with the form of their Oath.

THE High-Constables (as hath been St. Win. hinted) are usually chosen at the Dalt. J. P. Quarter Sessions, and do commonly take their Oaths there, or may by Chap. 16. Warrant

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warrant thence be sworn before one Justice of Peace elsewhere, and in the same manner may they by the Sessions be removed, and others put in their places.

Two Justices of the Peace, the one being of the *Quorum*, may appoint High-Constables in *Wales* by a special Provision of the Statute, 34 H. 8. Ca. 26.

But the Choice of the petty Constables doth most properly belong to the Leet, where sometimes they are elected by the Steward himself by Custom; but more frequently and regularly by the Inquests Presentment; yet they may also in some Cases be chosen by Justices of Peace in their quarter Sessions, and as the custom of the place is, and that (as some say) for one or two years: But the sounder opinion is, That this Office in its own nature is annual, and therefore when a man has served a year, upon his Complaint to the Quarter-Sessions, they ought to remove him and appoint another; the Oath is commonly administered to these petty Constables where they are chosen, or they may take it before a Justice at another time.

By

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By a late *Stat.* of the 14. *Car.* 2. *Ca.* 12. It is ordain'd, That upon the death or removal of any Constable out of the Parish, any two Justices may Elect and Swear a new one, to continue till the next Leet or Quarter Sessions, and then the Steward or Justices to chuse another, or confirm him that is in; and if any such Officer shall continue in his place above a year, the Justices may discharge him, and appoint another, till the Lord at his Leet shall place one to supply the Office.

But in other Cases Justices of the Peace are not to meddle in the chusing of a Constable, either in Sessions, or out of Sessions, where it hath time out of mind been used in a Court Leet, unless there hath been some neglect or misgovernment in the said Court; and in such Cases the Kings Bench is to decide the difference: If any Justice shall intermeddle to remove a Constable that hath been chosen by the Leet, the Leet may put him in again: for there hath always been a question of the Justices power herein, as you may read *Trinity 9. Jac. Banco Regis*, and in *Stiles Reports* 362. But it hath been

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been agreed by all the Justices, That if the Leet do not chuse a fit man Constable, or neglect to give him his Oath, or doth any unlawful Act in the chusing him, the Justices may chuse and swear another, *Mich. 22. Car. Banc. Reg.*

Vid.
Bulstr.
Rep. 1.
Part. f.
374.

It is said, That if Leets chuse unable or unfit men for petty Constables, it is a cause of forfeiture of such Leet, and the choice void, *Co. 8. 42.*

And therefore in the next place let us see who are fit and bound to serve this Office, which we shall set down first *negatively*, secondly *affirmatively*.

1. Not Divines, Justices of Peace, Attorneys at Law, Physicians in respect of their necessary Attendance elsewhere, neither Women, (whether Maids or Widows, though House-keepers, and dwelling in Houses, whose Inhabitants used to serve) Mad-men, Infants, old decrepit persons, nor poor people; none of these are fit for, or compellable, to be made Constables.

2. *Affirmatively*, Every person chosen Constable ought to be *idoneus homo*, that is to say, a man apt and fit for the Execution of the said Office, which word in the intention of the Law, implies

lies these three necessary Qualifications.

1. Honesty, one that will execute his Office without malice or partiality.

2. Knowledge, one that hath in some competent measure skill to understand his Duty, and what belongs to his place; and therefore an Infant, Person *non sana Memoria*, or Idiot, cannot serve.

3. Ability as well in wealth as body, that so he may spare time, and attend the Execution of his Office diligently; wherefore it was wont to be given as a special direction from the King, to chuse of the ablest of the Inhabitants as to Estates; which if duly observed, would be a great furtherance to the course of Justice throughout his Majesties Dominions; for poor indigent persons, when chosen Constables, either are ignorant what they may and should do, or are over-awed by their richer Neighbours so as for fear to balk their Duties, or else are not able to spare time to execute their Office, as is required by Law: For 'tis to be understood that Constables have no allowance, but are bound to perform their Offices *gratis*, which may the rather be endured by men of indifferent sub-

Bacon:
P. 25.

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substance ; because it is but for a year, and that they are not tyed to keep or maintain any Servants or under-ministers, but every one of the Kings people are bound to aid and assist them.

Where one is under one and twenty years of age (till which time he is an Infant in the Language and Consideration of the Law) he shall not be compelled to serve, nor an old man above seventy, but may sue out his Writ *denon ponendis in Assisas & Jurat. Vide Fitz-Herb. Nat. Brev.*

Likewise the Kings Majesties Servants in Ordinary are priviledged, because they are always supposed to be Attendants upon his person in his Court or Affairs, *Vid. Resolution of the Judges, 1633.* But whether a sufficient person that gets himself sworn a Servant extraordinary, but lives constantly at home, and scarce ever does any actual duty, shall be exempted from this Office, is doubtful.

The Members of the Colledge of Physicians, *London*, are priviledged by their Charter and special Statute, and so also ('tis said) are the Corporation of Parish-Clerks of the said City; and if any of all these be chosen, they may be

be removed by order of Sessions, or by Writ, or a Warrant from the King to the Sheriff of the County, and the High-Constable of the Hundred; of which see a President in *Dalt. J. P. fol. 322.*

So much for the person, but now as to that respect, which makes him liable to serve in this or that particular Tithing, concerning which note,

That a man is to serve this Office in respect of his personal abode, Residency or Habitation, and not in respect of his Lands: For if he keeps house in one place, & have an estate in another, he must serve where he lives, and not where his Estate lies; but if that Estate have a Tenant in it, a sufficient man, able to serve the Office, he may be chosen and made to serve it (even though the Landlord at the same time be in the same Office in the precinct, where he dwells) for they become capable both of serving in different respect, but the Landlord himself cannot be chosen to serve for that Borough or Tithing wherein his Land lies, though in his own hands, if his dwelling house be out of it: For perhaps (whether it be so or no, 'tis no matter, the Law rea-

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reasonably supposes it may so happen) he may be chosen to this or some other Office in the place where he lives, and a man can do service with his body but in one place at one time.

Yet if the Case be so, That a man hath two several houses in two distinct Leets, and do live sometimes at the one house, and sometimes at the other house, in this place he may be made an Officer at either of the Leets, within which he shall be dwelling, when the Leet is kept: And the next year, if he be removed to his other house, he may also be chosen there too: For a man may do Corporal Service well enough at two places at several times.

But if two Tithings be both within one Leet, and one man hath houses in both the Tithings; in this case it seems doubtful whether, though he live in the one Tithing, he may not be compelled to serve in this Office for his House in the other Tithing, especially if it be near, and he keep no Tenant in his House fit to bear the Office.

Hence it appears, That a Custom that the Office of Constables should follow the Houses, or that two or three in a Tithing or Town should execute the

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the same always is not good, nor according to Law, though formerly practised in some places.

But if any fit person (not exempted Dakr. Ca. or privileged as before) be lawfully 16. B. 814 chosen to the Office of Constable in a Leet, and refuse to take the charge thereof upon him; he may for such his contempt, be fined in the same Leet; or if he be chosen at the Sessions, or by two Justices out of Sessions, and shall afterwards refuse to be Sworn, he is to be bound over to the next Assizes or Sessions of the Peace, and there Indicted, Fined, and Imprisoned.

Yet note, a Constable may make a Deputy, or else how should the place be supplied in case of Sicknes, or other exigency: But if there be negligence or misdemeanour committed by the Deputy, the Constable Elected shall be answerable for the same: But in case the first, when chosen, desire to have a Deputy, and name a fit person, who accepts thereof, and is Sworn into the place, here the Deputy shall answer for himself: And of this kind are our hired Constables, frequent in and about *London*; yet it has been delivered for Law by the Judges, That this is practised

Crawlys Case,
1. Part of Croo. Rep. f. 409.

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practised rather by Toleration than Law.

We shall conclude this Chapter with

The Form of the Constables Oath.

YOU shall well and truly serve our Sovereign Lord the King [and the Lord of the Mannor, when Sworn at a Leet] in the Office of a Constable, and shall see the Kings Peace to be well and truly kept to the utmost of your power, you shall Arrest all such persons as in your presence shall ride or go Armed offensively, or shall commit or make any Riot, Affray or other Breach of the Peace, you shall do your best endeavour upon Complaint to you made, to Apprehend all Felons, Barretors, or Riotors, or persons riotously assembled; and if any such Offenders shall make resistance with force, you shall levy Hue and Cry, and shall pursue them until they be taken: You shall do your best endeavour, that the Watch in your Town be duly kept, and that Hue and Cry be duly pursued according to the Statute; and that the Statute made for punishing of Vagabonds, Rogues and Night-walkers, and such other idle persons coming within your Liberties, be duly

duly put in execution, you shall have a watchful eye to such persons as shall manage or keep any Common house or place, where unlawful Games are used, or such as shall frequent such places contrary to the Statute: And you shall have a care for the maintaining of Archery; at your Assizes, Sessions, or Leet, you shall present all the offences contrary to the Statutes, made and provided for the restraint of inordinate haunting and tippling in Inns, Taverns, and Ale-houses, and other Victualing places for the repressing of Drunkenness and profane Swearing; you shall true Presentment make of all Bloodshedding, Affrays, Out-cries, Rescues, or other Offences, committed or done against the Kings Peace within your limits, you shall well and duly execute all Precepts and Warrants to you directed from the Justices of the Peace and others, who have Authority in this County; you shall well and truly, according to your knowledge, power, and ability, do and execute all other things belonging to the Office of a Constable, so long as you shall continue in the said Office.

So help you God.

B

Or

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Or more briefly the Oath is sometimes Administred, thus:

YOU shall Swear, That you shall well and duely execute the Office of Constable (or Tything man) for the Parish (or Tything) of S. for this next year (or half year as the Case is) and until another be Sworn in your room, or you shall be legally discharged thereof,

So help you God.

CHAP. III.

The Authority of Constables distinguished, and the Power he hath by the Common Law declared.

THE Authority of Constables, is either substantive, and of it self, or substituted and adstricted to the Warrants and Commands of the Justices of Peace, or as others divide it; it is either Original given them by the Common Law, or additional, annexed by divers Statutes.

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As for the latter sort, viz. the subordinate power, whereby Constables are to execute the Commands of the Justices, or likewise the additional power given them by divers Statutes, the same, being very large, and of things of diverse dispersed natures, created by the Branches of many Statutes, we shall hereafter set forth the same under proper and distinct Titles, and in this Chapter shall only handle the original and substantive power of a Constable, which may be reduced to three heads,

1. For matter of Peace only.

2. For matter of Peace and of the Crown.

3. For matter of Nuisance, Disturbance and Disorder, although they be not accompanied with violence and breach of Peace.

1. Constables (under which name I here understand Borsholders, Tithing-men, Headboroughs, &c. for what is said of the ones Office, may in this respect be regularly said of the rest) within their several and respective Towns, Liberties, and Precincts are *Conservators of the Peace*

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(1.) Bro.
f. 127.
Tit. Af-
fray.
Dal. Just.
Peace.
Ca. 3.

(1.) *virtute Officii* by the very nature of their Office: Now in Law, this is said to be *Breach of the Peace*, when any person uses injurious force or violence against the person of another, his Goods, Lands, or other Possessions, either by menacing words or threats, furious gestures, force of the body, or any other unjust force used to terrifie him, whom it is directed to: And therefore the Conservation of the Peace consists likewise in three things.

1. In preventing and foreseeing that nothing be done, that tends directly, or may probably be an occasion or means of violating the Peace.

2. In quieting and pacifying those that are actually in breach of the Peace.

3. In punishment, such as have already broken the Peace.

Stat. Nor-
tha.
2 Edw.
3 Ca. 3.

A Constable, for preventing that nothing be done against the Peace, ought to stop all such persons, as go or ride unlawfully arm'd, and to take such their Armour from them, and commit them to the Goal.

He may take or arrest suspected persons, which walk in the night, and sleep

sleep in the day, or which do haunt any House, where there is suspicion of Bawdry, and carry them before a Justice of the Peace to find Sureties for their good behaviour; for though the Constable may do what he can to secure the Peace, yet he cannot of himself take Crompt. Surety of the Peace of any man: for it 6. 12. H. must be either by Recognisance, or Ob- 7. f. 18. a. ligation: And how can he take a Recognisance, who is no Officer of Record; and if he take Surety by Bond, the question is, how it shall be certified, and into what Court? Some are of Skarrets opinion, he may do it by Bond Sealed Case Trin. to the use of the King, and transmitted 35. Eliz. into the Exchequer or Chancery, in B. C. whence Process should be awarded to levy the Debt, if the Peace were broken: But my Lord *Anderson* declared, that the Constable ought not to meddle therewith, but only to apprehend the Offenders, and carry them before a Justice to find Sureties for the Peace there, which at this day is the most general and safest course.

For pacifying Quarrels begun, the Constables may upon hot words given, or violent likelihood of breach of the Peace to ensue, command them in the

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Kings name to keep the Peace, forbear and depart : And if any shall actually make an Affray in the presence of the Constable, Headborough, &c. or threaten to kill or beat another, or shall be in a fury ready to break the Peace, such Officers in any of these Cases may commit the Offenders to the Stocks, or some other safe Custody for the present (according to their Quality) until
 5. H. 4. 9. such time as he can carry them before a
 10. Justice, and upon their refusal to give Surety, may commit them to the Goal.

If a Constable be negligent in his Office, when he is sent for to part an Affray, or doth not use his best endeavour to part them ; this being presented by the Inquest at the Sessions of the Peace, such Constable may be fined
 Dalt. p. 33. for it : And if they have committed or caused any to be bound over for breach of the Peace, they must attend the Goal-delivery or Sessions of the Peace, to declare the Offences, for which they were so bound over or committed.

Crompt.
 146.

Dalt. Ca. 8. A Constable going to Arrest any that has made an Affray, may justifie his breaking open the doors ; and if he flie, may in fresh pursuit follow him, not only out of his own Liberty, but
 even

even into another County; and if he overtake him in his own County, has still in this case only as much Authority to arrest and carry him before a Justice, as if he had taken him in his own Precincts: But if he be got into another County, the Constable can pursue there but as a private man, and must get a Constable of that County to assist him, and carry him before a Justice there, and commit him (if the Case require it) to the Goal of the County, where he shall be found.

Note, it is properly no Affray, unless some Weapons are drawn, or some strokes struck, or threatned to be given, or some attempts to that purpose, by menacing gestures, or the like. And therefore meerly for opprobrious or hot words, the Constable may not lay hands on them, unless they threaten to kill, hurt or beat one another, and then he may seize them to find Sureties to keep the Peace; and where two persons be a fighting, though no hurt done, he may apprehend them to find such Sureties; but if any person be dangerously wounded, the Constable ought to Arrest those engaged in that Affray, and carry them to a Justice, who

Bro.
Faux
Impr. 6.

Dalt. Ca 8.
Kitchin.
fo. 68..

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is either to Bail them till the next Goal-delivery, or commit them, till it be known how it will fare with the party: for in case he dies within a year and a day, the Fact is Felony.

For punishment of breach of peace past, the Law is very sparing in giving any Authority to Constables, because they have no power Judicial, but Ministerial, and the use of his Office is rather for preventing or staying of mischiefs, than for punishing of offences; for in that part he is rather to execute the Warrants of the Justices; or when suddain matter ariseth upon his view, or notorious circumstances, to apprehend Offenders, and carry them before the Justices, and only to Imprison in cases of necessity, where the Case by reason of circumstances (as Night, danger of Rescue, or the like) will not allow the present carrying before the Justice: And therefore note, that after an Affray is over, the Constable coming without a Warrant, cannot Arrest the Affrayers, except some person amongst them be in peril of death, by hurt there received; yet before the Fray begun, and during the time thereof, he may Arrest them without Warrant.

38. H. 8.
Bro.
Faux
Impr: 6.

The

The Second part of the Constables Substantive Office, or things he may do by his own Power, relates (as we told you) to matters of the Crown, and consists chiefly in Four parts.

1. Arrest. 2. Search. 3. Hue and Cry, and the 4th. Seizure of Goods.

All which a Constable may perform by vertue of his Office, without any Warrant from the Justices.

1. For first, If any Man will lay Murther or Felony to anothers charge, or do suspect him of Murder or Felony, he may declare it to the Constable, and the Constable ought upon such declaration or complaint, to carry him before a Justice; and if by common voice or fame any man be suspected, the Constable of duty ought to Arrest him, and bring him before a Justice to be examined, though there be no other Accusation.

2. If any House be suspected for receiving

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ceiving or harbouring of any Felon, the Constable upon complaint or common fame, may Search.

3. If any flie upon a Felony committed, the Constable ought to raise Huy and Cry to take him, and in the mean time to seize his Goods, and to Inventory them in the presence of honest Neighbours.

The last Branch of this part of a Constables Office, as we said, refers to Nusances and Disorders, though not accompanied with violence and breach of the Peace. which matters of Common Nuisance and grievance, are of a very variable Nature, according to the several Comforts which Mans Life and Society requireth, and the Contraries which infest the same.

Nusances.
Bacons
Cases.
p. 28.

In all which, be it matter of corrupting Air, Water, or Victuals, or stopping, straightning, or endangering Passage; or general deceits in Weights, Measures, Sizes, or Counterfeiting Wares

Wares and things vendible : The Office of the Constable, is to give (as much as in him lies) information of them, and of the Offenders in Leets, that they may be punished : But because Leets are kept but twice a year, and many of these things require present or speedy remedy, the Constables in things of notorious and vulgar nature, ought to forbid and repress them in the mean time.

General Observations most necessary to be known concerning Constables, Tything-men, Headboroughs, &c.

1. All the Cases herein before or afterwards declared, touching the Office and Duty of these Officers, must be so understood as to Authorize and charge them within their own Limits and Precincts only, for which they were chosen, and no further : For although they are bound to look to the Peace, suppress Felons, Execute Justices Warrants, and the like, yet all this is meant within their own Hundreds, Parishes and Tythings only, within which

The Precinct of the Constables Office.

which alone they have Authority and power, unless in the special Case of pursuing an offender that flies from them out of their own Liberties, carrying a Malefactor to the next Justice, or to the Goal, or the like; for otherwise, out of their own Precincts they have no more Authority than a private man, nor are they there bound to do any of the things appertaining to their Office, any more than any other man is.

Refusal to Aid him. 2. These Officers generally in the execution of their Office, when need is, or any resistance or danger is apprehended, may charge so many of their Breo. Neighbours, or others of all sorts of Tresp. able men, as he shall think meet, to 431. Dalt. Aid and Assist them; and if any person 303. shall refuse or neglect so to do, he may be Fined and Imprisoned for it at the Quarter Sessions.

Breaking open Doors. 3. Though every mans House be esteemed his Castle, and great respect be given it by the Law, yet these Officers, if they cannot otherwise get in, Dalt. 176. may justifie the breaking open a mans Coe. 5. 92. House in these Cases following: To 13. Edw. search after, or Arrest any person for 4. 9. Treason, Murder, Felony, or suspicion of the said Crimes, that is, or is pro-

probably thought to be in the House :
 To take a man that hath dangerously
 wounded another, and is fled into the
 House, to appease a Fray that is in the
 House, especially if there be any cry of
 Murder, to apprehend a Popish Recu-
 sant upon a Warrant to break open
 the House, upon a Warrant to take a
 Conventicle where they shall be in-
 formed one is held within, to seize the
 persons met, by the Stat. 22. Car.
 2. Car. 1. But to levy the Fines Assessed
 on persons present at Conventicles,
 they cannot justifie breaking open
 doors, several both at *Kent* and *Essex*
 Assizes having been sued thereupon;
 likewise in the day time, they may
 force into any House upon a Warrant to
 search for uncustomed Goods by the
 Stat. 12. Car. 2. Ca. 19. and 14. Car. 2.
 Ca. 11. And generally in Cases where
 the Kings Majesty is immediately con-
 cerned, or has any Interest. But in all
 these Cases, the Officer before he does
 break open the House, must signifie the
 cause of his coming, and require the
 door to be open'd.

4. 'Tis very dangerous to oppose
 or hinder these Officers in the perfor-
 mance and execution of their Office.

Resisting
 Constables.

For

Coo. 4.
40. 9. 9.
Broo.
Tresp.
296. Dalt.
297.

For to kill one of them is wilful Murder, certainly punishable with death, though he that did it, had no real intent nor design to kill him, yet the Law construes it Murder, because against a minister of Justice; to beat or wound any such Officer in the doing of his Office, is a great Trespas, not to be recompensed without considerable damages; and even otherwise to abuse him in doing of his Office, as aforesaid, with reviling Language, is a misdemeanor that may cause the Offender to be bound to his Good behaviour.

As the Law thus protects her Officers, so it no less disfavours those that shall oppose them. And therefore if the party that is to be Arrested, shall make resistance, assault the Officer, or any of his Assistants, or labour to make an Escape, the Officer may justify the beating, yea, the wounding him also; and if it be upon a Warrant, to Arrest one Indicted of Felony, he may justify the killing him, if he cannot otherwise take him, or if being taken, he resist or flee.

Judges
Opinion.
5. Car.
7. Jac.
Ca. 5.
21. Jac.
Ca. 12.

And for their further indemnity in the lawful execution of their Offices, it is

is provided by special Statutes, That if any Action, Bill, or Suit, as Trespasse, false Imprisonment, or the like, shall be commenced or brought against any Constable, Tything-men, Churchwardens, Overseers for the Poor, and other Officers there particularly named, or any of their Assistants, for or concerning any matter or cause, by them or any of them done, by virtue of their, or any of their Offices, or by any persons in their Aid and Assistance, or by their commandment.

1. That every such Action or Suit shall be brought and laid within the County, where the Trespasse or Fact shall be done and committed, and not elsewhere.

2. That all such Officers and their Assistants may plead the general Issue, *Not guilty*, to all such Actions, and give the special matter in evidence.

3. That in all such Cases where the Verdict passeth for the Defendant, or the Plaintiff is *Nonsuit*, or discontinues his Suit, these Officers shall be allow'd double Costs to be recovered, as other Defendants, to recover their usual Costs.

CHAP. IV.

*How Constables are to discharge
their Duty in Relation to War-
rants sent to them from Justices
of Peace.*

Hitherto we have spoken of the Constables Office, as 'tis Substantive, and of it self, we come now to consider it as the same is substituted and adstricted to the precepts of the Justices; for which,

Dalt. 291. 1. Note, That these Officers must with all respect, receive the Warrants of the Justice of Peace. For if a Warrant be directed and brought to one of these Officers, and he shall shew any neglect or contempt of it, as by flinging it into the dirt, &c. or do not with all care, secrecy, and diligence, execute the same, these are Misdemeanors, for which he may be either bound to the Good-behaviour, or be Indicted and

(i) 27. H. Fined: And by a special Statute (i)
8. Ca. 5. there is a great charge laid upon the
Officers within the several Counties of
Wales,

Wales, That they be careful to execute the Warrants of Justices of the Peace there.

2. The Officer must well consider what he goes about; for though it be true that he is not obliged to question, nor may he dispute the Authority of the Justice, or legality of his Warrant in things belonging to his Office. For if the Justice mistake and go beyond his Authority in the manner of proceeding, in a Case wherein, for the matter, he hath Cognizance: As if he send a Warrant to him, to Arrest any man for the Peace or good Behaviour without any Cause, or to take a man for a Felony when none is done: In these and the like Cases the Officer is bound to execute it, and shall be excused therein. But if the matter, about which the Warrant is, be such as is out of the jurisdiction of the Justice of Peace, I mean, wherein he is no Judge. As if he send his Warrant to the Constable to levy of the Goods of *T. L.* ten pounds debt, which he doth owe to him, or to any person; and all this appears by the Warrant it self. In this and such like Cases it is agreed, that the Officer may refuse to execute it,

How far
bound to
obey
Warrants.

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it, and may not without danger obey it.

In some
Cases.

And here we must distinguish between things apparent, and things concealed, between smaller and more great and notorious mistakes: As if a Justice send a Warrant to levy of a man ten pounds because he hath sworn an Oath, or to sell the one half of the Goods of a man convicted before him, for swearing four Oaths, when perhaps the Goods are worth an Hundred pounds; or send a Verbal Warrant only to one that is absent (for if he be in his presence, 'tis good) or send a Warrant to the Constable, requiring him to do something out of his Precincts: In these and the like gross Cases the Constable is not bound to obey, nor shall he be excused if he do it. But if the Justice, where he hath power to send a man to Prison after ten days, for such an offence or default, grant a Warrant to send him to Prison before the ten days are out; or, if when by some Acts of Parliament, he is directed to send a Warrant under his Hand and Seal, he send it only under his Hand; or where he is to direct it to the Constable and Church-wardens, he send it to the Constable or Church-wardens, &c.

In

In such petty mistakes, it seems reasonable, the Officer should notwithstanding execute it, and be excused therein: Wherefore my Advice to Officers, is, to consider well of the Warrant, and if they find the thing required to be done, be nothing but what is ordinary, and hath been used to be done by such Officers; then to do it. But if it be to do any thing unusual, new and extraordinary, That then, without any contempt and stubbornness, they endeavour to be well advised before they do it; though at this day the Commissions for the Peace, in each County, are fill'd with such discreet, judicious, and intelligent Gentlemen, that we conceive such a Warrant absolutely defective, or dangerous, for the Officer to execute, will rarely, if ever happen: However, for these things, See *Coo. 10. 76. 6. 54. 14. H. 8. 16. Broo. Faux Imprisonment. 8.*

3. If any Officer Arrest any man under pretence of a Warrant, he ought to have his Warrant first, and directed against the right person. For if he Arrest first, and bring the man to the Justice, and then get a Warrant to do it, such Arrest is false Imprisonment; and

and the subsequent Warrant, though Antedated, shall not make it lawful; likewise if a Warrant be intended against *J. K.* (who is the Delinquent) but be sent against *H. C.* another man, in this Case the Officer cannot Arrest *I. K.* by an averment of the intendment, but must Arrest *I. D.* For he is bound to follow the express words of his Warrant, and not to exceed it, for that may be dangerous; yet this is to be understood, *cum grano Salis* with discretion, *viz.* That when any thing is commanded, all that doth necessarily conduce to the performance thereof, and without which it cannot be done, is commanded also. And therefore so much may be done, although not expressly set down in the Warrant.

Verbal
Warrant.

4. A Warrant from a Justice of Peace by word of mouth, is as good in some Cases as a Warrant in writing. As if a *Riot*, or other breach of the Peace happen in his presence, he may by word of mouth command the Officers or any others, to Arrest the Offenders to find Sureties for the Good behaviour in the first, or for the Peace in the last case; and if they refuse to put in such Sureties, he may likewise by
word

word of mouth, command to convey them to the Goal; But in other cases his Verbal Order to an Officer for Offences committed out of his presence, is no sufficient Warrant. And if he send an Order by message only, to an Officer to Arrest a man, and carry him to Goal, the Constable may lawfully refuse it.

5. A Constable or other publick Shewing sworn Officer (though he be not the Warrant. known to the party Arrested) needs not to shew his Warrant to the party, Coo.9.69. when he comes to serve it upon him, Dalt. 28. although he demand it. But otherwise it is, when one that is no Officer, shall Arrest a man on a Justices Warrant; for he must shew his Warrant. And the sworn or known Officer also, must upon the Arrest, declare the contents of the Warrant to him. And note that a Constable, or the like Officer gives sufficient notice what he is, when he saith to the party—I Arrest you in the Kings Name (for those words are an Arrest in Law, although he never lay hands on him) and the party so Arrested must at his peril obey, though he know him not to be an Officer; for if he have no lawful Warrant,



Escapes.

rant, he has his remedy by Action of false Imprisonment against him. These Officers having apprehended any person, ought to be very vigilant to keep him safe, and prevent Escapes, especially if the Arrest be for matter of Felony; for there an Escape suffer'd voluntarily, is Felony in the Officer; and whatever the cause of the Arrest be: and be the Escape suffer'd either voluntarily, or involuntarily, and by negligence, if the Officer do not take the Prisoner again by a fresh pursuit after him, he shall be Fined for it according to his Offence, at the discretion of those that shall be Judges of the Cause, who (I must tell you, lest any man should flatter himself with hopes of coming off at an easie rate) have power to set his Fine to the value of all his Goods, if they think fit; nor is this hard or unreasonable, since these Officers going about their duty may command and take what Assistance and help they please. And note, that if an Officer take a man upon a Warrant, and lets him go, taking his word that he shall come to him such a day, to go before the Justice, and the party come not; this is an Escape in the Officer,
for

for which he may be punished; nay, it seems the Officer cannot now Arrest him upon his former Warrant, but must procure a new one. But if the party do make an Escape of his own wrong, without consent of the Officer, there the Officer on the same Warrant, on a fresh pursuit may take him again, although he were got out of his sight, or even out of his Liberty, as before was shewed in the former Chapter.

7. Although these Officers (as by what we have said appears) have power in divers Cases to Imprison or carry to the Goal; yet when the party by them committed, is actually in a Goal or Prison, they have not power in any Case to set him at liberty again, without carrying him before a Justice, or other due Process of Law; yet is not this so rigidly to be understood as the City-Constables generally conceit, who hold, that if a person be taken in the Night on their Watch, who possibly gives disobliging Language, and thereupon the Constable says to some of his Watch-men---*Carry him to the Counter.* Now they maintain, that after these words pronounced, the Constables on the parties submission,
or

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or proof of his being a civil person, or other inducement whatsoever, cannot call him back or discharge him, though he be not yet actually in the *Counter*, which seems a very vain and groundless opinion. For if an Officer in case of an Affray, shall only put the Affrayers apart into the Stocks, or into some House or Room, until the heat be over; 'tis agreed in this Case, the Officer may of his own head set them at liberty again, *Ergo a fortiori* in the other Case.

8. There is a like mistake, that a person on a General Warrant, may chuse what Justice he will go before, which is not only against Law, but sense, that the Election should lie in the power of the Delinquent; or that the Officer should be obliged to wait on him at his pleasure; but he may carry him to what Justice he himself thinks fit; yet if the Warrant run only *To bring him before me* (without adding, or any other of his Majesties Justices) then the Constable must carry him to the same Justice that granted the Warrant, and not elsewhere.

Lastly,

Lastly, Note, that every person committed to Goal, ought to bear his own Charges to be levied (*) of his Goods and Chattels, on a Warrant to that purpose to be granted by the Justice; but if he have not Goods, then the charge of conveying him is to be born by the Parish where he is Apprehended, by an indifferent Assessment made by the Constable and Churchwardens, and two or more of the Inhabitants, and allowed of by a Justice of Peace: And as for the Goaler, he is bound to receive the Prisoner freely, without taking any thing of the Officer that brings him.

CHAP. V.

The Constables Duty by several Statutes, as concerning profane Swearing, profaning the Sabbath, Drunkenness, disturbing Ministers, Recusants, Quakers, and Conventicles.

WE now proceed to particularize the Constables Office and Duty, as required and enjoined by several Statutes, having been the larger in the two fore-going Chapters, as well for that we conceive those things to be absolutely necessary to be known by all that would understandingly discharge their Office; as also because that some who lately have obtruded directions for Constables on the World, have either wholly omitted, or very lamely and imperfectly delivered the same.

A Jove principium----

We

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We shall begin this Chapter with *Profane Swearing.* matters appertaining to Religion. All persons that profanely Swear or Curse, for every such Offence, forfeit 12. *d.* to the use of the Poor of the Parish where the same is committed; the offence to be proved within twenty days, by two Witnesses, or confession of the Party before a Justice, or chief Magistrate of any Town Corporate, who upon such Conviction are to issue out their Warrant to the Constable, Church-wardens, and Overseers, to levy the Forfeitures by distress and sale of the Offenders Goods, restoring to him the *Overplus*: But if the Offender have no Goods that can be found, the Offender (if above 12 years of Age) shall by the said Officers by Warrant, as aforesaid, be set in the Stocks three whole hours; and if under 12 years old, and do not forthwith pay the forfeiture, then he or she must be whip'd by the Constable, or by the Parent or Master, in the presence of the Constable. If this were well observed, we should not have our Streets echo thus with Oaths and horrid Execrations.

If any person go out of their own *Profaning the Sabbath.* Parishes on the Lords day, for any Sports

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Sports or Pastimes, as *Bull-baiting*, *Bear-baiting*, *Interludes*, (or *Stage-plays*) each person forfeits 3 s. 4 d. to the use of the Poor of that Parish where the offence is committed, it being a sufficient Conviction, if done in the presence of a Justice, or proved by the Oath of one Witness or more, or Confession of the Party, upon which the Justice or chief Magistrate of a Corporation is to direct his Warrant, under his Hand and Seal, to the Constables or Church-wardens, to levy the penalty by distress and sale of the Offenders Goods, returning the *overplus*; in default of distress found, to set them in the Stocks three hours; but note, the Offender must be prosecuted within one Month. *Stat. 1. Car. 1.*

By Sports.

Every person keeping, or being present at any Wrestling, Shootings, Bowlings, Ringing of Bells for pleasure, Mask, Wake, Church-Ale, Dancing, Games, Sports, or Pastimes, forfeits 5 s. if above fourteen years of Age; or if under, 12 d. by them, under whose Tuition He or She is; to be Levied on a Warrant by the Constable as aforesaid, or for want of distress, to be set three hours in the Stocks; *3. Car. 1.*

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The same Statute punisheth all Carriers, Waggoners, Carters, Wain-men, or Drovers Travelling on the Lords day, with the forfeiture of 20 s. And all Butchers that kill or sell any Victuals on that day, forfeits 6 s. 8. p. Which sums after Conviction, may by Warrant be levied by the Constable or Church-wardens, to the use of the Poor, where the offence is committed, by distress and sale of Goods, rendring the over-plus; the Conviction shall be by view of the Justice or chief Officer, confession of the Party, or Oath of two or more Witnesses: And for encouragement, the Justice, Mayor, &c. may reward the Informer with a third part of the penalty, laid on the Butcher, but all these offences must be prosecuted within six Months. And as to Carriers, &c. there shall be but one 20 s. forfeited for one Journey, though they pass through several Parishes; which 20 s, that Parish shall have where the distress is first taken. 3. Car. 1. Ca. 1. Dalt. fo. 134.

By Carriers, Drovers or Butchers.

The Constable or other Inferiour Officer in every Parish, shall present at the Assizes, Sessions, and Court Leets, all common Tipplers and Drunkards; Drunken- nefs. St. 4. Jac. Ca. 5. 21. Jac. Ca. 7. Dalt. Chap. 7.

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and if they neglect to serve the Justices Warrant of distress or punishment against Townsmen, or other continuing Tipling in any Inn, Ale-house or Victu-
 aling house, contrary to the Statute, or against persons for being drunk; that is to say, three shillings and four pence for Tipling, and five shillings for being drunk to the use of the Poor, to be levied on the Offenders Goods, and sale thereof after six days default of payment, restoring the overplus : And in case no distress can be found, to set the Tipler in the Stocks for four hours, and the Drunkard for six hours, the Conviction being by the view of any Major or head Officer of a Corporation, or Justice of Peace within their respective Limits, or by the Oaths of two Witnesses, (but by the *Stat. 2 Jac. 5.* the Magistrates view, his own Confession, or one Witness is sufficient to convict him) I say, if in this case the Constable neglect his duty, he himself forfeits ten shillings to the use of the Poor, to be levied upon his Goods by distress and sale as aforesaid : But note that those offences must be prosecuted and inquired of within six months after they were committed :

But

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But those that are convicted a second time, shall be bound with two Sureties to be of the good behaviour ; and the Oath of any one that confesseth the offence, shall be a good conviction against any offending with him at the same time.

Any person disturbing a lawful Minister in Preaching, Praying, or administering the Sacrament, shall presently be apprehended by the Constable or Church-wardens, and carried before a Justice, who may, if he please, commit him to safe custody, and within six days may with another Justice, if they find the offence proved by two Witnesses, commit him to the Goal for three months, and from thence till the next Sessions, where giving Security for the good behaviour, he may be discharged, otherwise to continue in Prison till he do submit. He that rescues such an offender, shall suffer Imprisonment, and also forfeit 5 l. which sum the Inhabitants likewise forfeit, if they suffer him to escape, *St. 1. Mar. Sess. 3. Ca. 3.* Yet quere whether this Statute be in force, for some think it repealed by the *1 Eliz. Ca. 2.* See *Dalt. Ca. 41. p. 103.*

*Disturbing
of Mini-
sters.*

Recusants
St. 35. E-
liz. Ca. 2. Recusants above sixteen years of age convicted, shall repair to their usual dwelling, or where their Father or Mother dwells, and not remove above five miles from thence, on pain of forfeiting all their Goods, and their Lands and Annuities for life, and therefore they are to give their names in writing to the Minister and Constables, who are to enter them in a book, and transmit them to the Sessions, there to be Inrolled.

St. 3. Jac.
Ca. 4. The Constables and Church-wardens ought once every year, at the Quarter Sessions, to present all Popish Recusants with their Servants and Children above nine years old, that come not to the Church monthly, on pain of forfeiting 20 s. Which presentment the Clerk of the Peace, or Town Clerk is to Record without fee, or he forfeits 40 s. And for every such Recusant Indicted and Convicted, (not before conviction) the Constables, &c. that presented him, shall have 40 s. out of his Goods.

St. 7. Jac.
Ca. 6. If the Minister, petty Constable, or Church-wardens of any Parish, or any two of them, shall complain to a Justice of the Peace, of any person suspected of.

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of Recusancy, such Justice may tender the Oath of Supremacy to the person suspected; and if he refuse to take it, commit him to Goal till the next Assizes or Sessions; where if he again refuse, he incurs a premunire; but in case it be a Feme Covert, she shall only be continued in prison without Bail till she take it.

Quakers that shall maintain an Oath in all Cases unlawful, or refuse to take an Oath lawfully tendred, or meeting under pretence of Religion, to the number of five or more, being convicted by Verdict, confession or notoriousness of the Fact; for the first offence forfeit any sum that the Judges please, under 5*l.* to be levied by distress; or for want thereof, and upon non-payment in a week, to stand committed three months without Bail, to the Goal or House of Correction. For the second offence 10*l.* or six months Imprisonment, as aforesaid. The third offence is Transportation. And in all these things Constables are to be subservient in the execution of the Justices Warrants to them directed as well for distraining and selling the Estate of such as are to be Transported,

Quakers
St. Car. 2.
Ca.

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as for levying the first and second forfeiturer. For if they neglect their duty herein, they forfeit 5 l. for every offence, *St. 16. Car. 2. Ca. 4.*

Conventicle. St.

22. Car. 2.

Ca.

If any Constable, Headborough, Tything-man, Church-warden, or Overseer of the Poor, shall know or be credibly informed of any Conventicle (that is, any meeting of five Persons, or more, above the Family, under colour of Religion, in other manner than according to the Liturgy of the Church of England) within his Precincts, and shall not inform some Justice or Chief Magistrate, but neglect his duty in execution of this Statute, he forfeits 5 l. And a Justice or chief Magistrate, if he neglect, shall forfeit an 100 l. One half to the Informer.

By the same Statute, Constables, Headboroughs, Tything-men, Church-wardens, and Overseers of the Poor, are Authorized and Required, having first received a Warrant under the Hands and Seals of one or more Justices or chief Magistrate, to levy the fines and forfeitures Assessed on those who shall be present at such Conventicles, which are as follows.

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The first offence to be Recorded, and a Fine of 5 s. imposed. The second offence a Fine of 10 s. Both these Fines to be levied by distress on the Offenders goods; or in case of his Poverty, on the goods of any other Person, convicted for being present at the same Conventicle, at the Justices discretion. Every Preacher convicted, forfeits 20 l. for the first, and 40 l. for the second offence; if unknown or thought unable to pay, to be levied on any persons present.

And every one that suffers such Conventicle in his or her House, Out-house, Barn, Yard, or Backside, forfeits 20 l. In case of their Poverty, to be levied on any other present, provided that no one person shall pay above 10 l. for any one meeting, in regard of the Poverty of others.

All such monies levied, the Constables, &c. are to deliver to the Justices, &c. to be divided, one third part to the King, another to the Poor of the Parish, where the offence was committed, and the other third to the Informers, &c.

It is there also Enacted, That by a Warrant from one or more Justices, or the

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the chief Magistrate of a Corporation, the Constables, Headboroughs, and Tything-men (Overseers are not named) may, with their assistance, after refusal or denial to enter, break open any House where they shall be informed a Conventicle is, and secure the persons. *But no such power is given, when they go to levy the Distresses or Forfeitures.*

Note, A Feme Covert offending and Cohabiting with her Husband, the penalties of 5 s. and 10 s. shall be levied on the goods of the Husband.

CHAP. VI.

The Constables Office, Concerning Watching and Warding, Hue and Cries, Riots, Forcible Entries; Arms, Chimney-money, Customs and Excise.

*watch and
Ward. St.
13. Ed. 1.
Ca. 4.*

ALL Constables within their Precincts, are to keep a Night-watch from *Ascension* day (commonly called *Holy Thursday*) till *Michaelmas* from Sun-setting to Sun-rising, by two

or

or four men, according to the largeness of the Precinct.

Concerning which, these things are to be noted.

1. That none but Inhabitants of the same Town or Precinct are compellable to Watch and Ward.

Kitchin
47, 48, 49.
Dalt. J. P.
Ca. 60.

2. They must be men of discretion, able bodies, and sufficiently armed.

3. The said Inhabitants are bound to Watch, only by their respective turns, or by the House according to the custom of the place, and not unequally at the Arbitrary pleasure of the Constable. For though the Constable *ex officio*, is to order it, and may enlarge it upon occasion, yea he cannot change the course of it, so as to make some Watch, and excuse others.

4. If any person so compellable to Watch, shall refuse so to do, or neglect his duty therein, the Constable may present such a person at the Assizes or Sessions, or complain of it to a Justice, who may bind the Offender to the good Behaviour. And some hold that the Constable in such a case, may of his own Authority set such refusers in the Stocks.

5. That

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5. That in default of this Watch, the Township may be Fined., and therefore the Constable is to see it be done in an orderly way, and complain and get it rectified if it be neglected.

6. These Watchmen are to examine all Strangers that pass by them in the Night, and if they find them suspicious, may Arrest and detain them till Morning; and if they refuse to obey, may levy Hue and Cry to take them, and if they resist, may justifie beating of them, or set them in the Stocks or Cage till Morning; and then if no suspicion be found in them, they may discharge them; but if there be grounds to suspect them, then they must deliver them into the hands of the Constable, to have them before a Justice, that he may upon Examination, commit, bind over, or acquit them as he shall see cause. Furthermore, these Watchmen are to Apprehend Rogues, Vagabonds, Evesdroppers, and all such as shall go or ride unlawfully Armed, &c. See the Stat. of *Winchester* and *Lamb.* *Office of Const. p. 12*

Every Constable is to levie Hue and Cry where there is cause, and send it East, West, North, and South, wherein

tis

'tis best to express the nature of the things Stolen, and to describe the Felons; and when such Hue and Cry comes to an Officer, he must with all speed make diligent pursuit both by Horse and Foot, after the Offender from Town to Town, the way it is sent, and to make diligent search in all suspicious places within his own precincts. For otherwise both the Constable and the Hundred may suffer for the neglect, and the Hundred where fresh pursuit ceaseth shall answer half the damages to the Hundred where the Felony was committed.

27 Eliz.
Ca. 13.

*Peace and
Superse-
deas, Dale.
Ca. 69.
Lambard
Office of
Const. p. 21.*

Though we have before declared the Constables duty, in relation to preserving the peace, yet here it properly falls in to advise, that a Constable having a Warrant from a Justice of Peace to Arrest a person, to find Sureties for the Peace, if afterwards he receive a *Supersedeas*, either out of Chancery, &c. or from any other Justice of the same County, to discharge the putting in such Sureties; he ought to desist from urging the party further to put in Sureties, for he may then lawfully refuse to do it; and if the Constable Arrest him for such refusal, 'tis false Imprisonment.

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prisonment. But in such case 'tis good the Officer do keep the *Supersedeas* for his better discharge, if he shall be called to an account for not serving the Warrant directed to him.

Riots. Sr.

27. R. 2.

Ca. 8.

All Sheriffs, Constables, and other the Kings Officers, shall suppress Riots, and Imprison the Rioters, and all other Offenders against the Peace. Now for the better understanding of this, you must note, that when three or more persons assemble themselves to do any unlawful act with force, against the person of another, his goods or possessions, as to Kill, Beat, or Imprison him, to pull down a House, Wall, Pale, Hedge or Ditch, wrongfully, to enter upon, or into another mans Possessions, House or Lands, or to cut or take away his Corn, Grass, or Woods, or unjustly to hunt in any Park or Warren, &c. If they only meet to such a purpose or intent, though they afterwards depart of their own accord, without attempting any thing; this is an unlawful Assembly: If after such meeting they shall ride, go, or move forwards towards the execution of such their intention, whether they put it in execution or not, this is a Rout; and if they do

unlawful
Assembly.

A Rout.
A Riot.

the
cry,
Ca.

do any such unlawful act indeed, then 'tis a Riot, *Bro. Titl. Riot. 4. 5. Cok. 3. part Instit. fo. 176.*

If a Constable or any private person of the same County, in case of a forcible entry, refuse to aid and assist the Justices upon their request to remove the force, or convey the parties to Goal, he may be Imprisoned and fined for his neglect. *Forcible entry. 15. Rich. 2. Ca. 8.*

If any person shall ride or go Armed offensively before the Kings Justices, &c. or in Fairs or Markets, or elsewhere by night, or by day, to the affrightment of his Majesties People, the Constable upon sight thereof, may take away their Weapons, and cause them to be apprized as forfeited to the King, and carry the parties before a Justice to find Sureties for the Peace. But by the same Statute 'tis provided that the Kings Servants in his presence, Sheriffs and their Officers, and other the Kings Ministers, and such as are pursuing Hue and Cry, may bear Arms or Weapons. *Arms. St. 2. Ed. 3. Ca. 3.*

All High and Petty Constables, and other Officers within their several Parishes, are to be aiding to such persons as by Warrant from the Lords Lieutenants,

tenants, or any two of their Deputies, under their Hands and Seals, to search for, and seize Arms in the possession of persons judged dangerous, and to secure the same, and to give an account thereof to such Officers : But this search is to be made only in the day-time, between Sun-rise and Sun-set, and not otherwise, unless in Towns Corporate, Market-Towns, or Houses near *London*, within the Bills of Mortality, for there search may be in the night, if the Warrant so requires. In case of Resistance, they may enter with force; but such Arms so seized, afterwards, if the Lieutenants, or any two of their Deputies think fit, may be restored to the Owners.

Ibid. and
Stat. 15.

Car. 2.

Ca. 4.

Constables by Warrant under the Hands and Seals of the Lord Lieutenant, or any three or more of the Deputy Lieutenants, must levy all such money, forfeitures, and payments charged on any person within their Liberties, for furnishing of Arms, Horse, or Foot, or payment of Souldiers; and where sufficient distress cannot be found, the Constable by like Warrant from the Lieutenancy, may commit the Offender to Prison, till he pay.

Though

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Though the Duty of high and petty Constables about Chimney money, ^{chimney money.} as it was first appointed by the Statutes of 14 Car. 2. Ca. 10. and 15. Car. 2. Ca. 13. is now much alter'd, particular Officers being appointed for the Collecting thereof by the Stat. of 16 Car. ^{16 Car. 2 Ca. 3.} 2. Ca. 3.

Yet by the same Statute, all Justices, chief Magistrates, Treasurers, and under Treasurers, Constables, and other Officers within their several limits, are to be aiding to his Majesties Officers appointed for Collecting the duty of Hearth-money.

Such Collectors once every year, accompanied with the Constable or Tything-man, or in Parishes or places where there is none, without such assistance, may in the day-time enter any House, Edifice, Lodging or Chamber, &c. and examine whether there be any more Fire hearths or Stoves, than formerly returned, and what are increased or decreased since the last Certificate; and if they find any variance, both such Collector, and the Constable or Tything-man are to certify the same under their Hands to the Clerk of the Peace.

Ibid.

If

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Ibid.

If the Party after demand made at the premises where the duty grows due, by such Collector make default, or refuse to pay by the space of one hour, the Collector, with the assistance of the Constable, may at any time in the day levy the said duty by distress and sale, restoring the overplus, but with a deduction of necessary charges, which charges are not to exceed one half of the sum, or duty distrained for.

Ibid.

Note, No arrears of Hearth-money are to be distrained for after two years, from the time of their becoming due. And if any violence, opposition or injury be done to any Collector in the due Execution of his Office, Oath being made thereof before any one Justice, or chief Magistrate; such Justice or Magistrate, if they think fit, may commit the Offender to the Common Goal for any time, not exceeding one Month.

Ibid.

The Constables are to have Two pence in the pound paid them by the Collector, to whom they pay the Chimney-money by them collected, and are to pay nothing to the Collectors for their Acquittances.

Customs
Stat. 12.
Car. 2.
cap. 19.

Sheriffs, Justices and Constables, are
upon

upon request to be aiding to any person, having a Warrant from the Lord Treasurer, or any of the Barons of the Exchequer, or chief Magistrate of a Port for the search of uncushtomed goods, who (with such their assistance) may in the day time enter into any House, where such goods are suspected to be concealed; and in case of resistance, may break open the House, and seize and secure such goods.

But no House is so to be entred, but within one Month after the offence supposed to be committed. And if the information whereby the House comes to be searcht, do prove false, the party injured shall recover full costs and damages against the Informer by Action of Trespas.

Ibid.

All Constables, Headboroughs, and other the Kings Officers and Subjects, are to be aiding and assisting to all, and every person and persons which are, or shall be appointed to manage his Majesties Customs; --- And such as are --- Authorized by Writ of Assistance out of the Exchequer; are to take a Constable, Headborough, or other Officer Inhabiting near the place; and in the day time, to enter into any House, Shop, Ware-

Stat. 14.
Car. 2.
cap. 11.

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Warehouse, &c. And in case of resistance, to break open Doors, Chests, &c. and to seize, and thence to bring any kind of Goods or Merchandise whatsoever prohibited and uncustomed, and secure it in his Majesties Storehouse, at the next Port.

Excise.
Stat. 12.
Car. 2.
cap. 23.
and 24.

Gagers (or Excise-men) are to take a Constable with them when they enter by night into the Houses of Brewers, Victualers, &c. to Gage their Coppers, Fats, or Vessels; or take an account of their Beer, Ale, Wort, Perry, Sider, Strong-water, Metheglin, Mead, Coffee, Chocolet, Sherbet or Tea; brewed, made, or distilled there.

Ibid.

Constables are also upon Warrant from the Justices to levy the penalties on the goods of any person Convicted of any offence or forfeiture within the Acts for Excise, restoring the overplus. And for want of distress, to carry the party to Goal, till satisfaction be made.

They are likewise upon Warrant to them directed, to summon all Ale-house-keepers, &c. to appear before the Commissioners of Excise, at the days and places in such Warrants appointed.

CHAP.

CHAP. VII.

The Constables Office, relating to Ale-houses, Beggars, Rogues, Vagrants, Vagabond Children, Labourers, Servants, and punishing Hedg-breakers or Wood-stealers.

IN the Fifth Chapter we have set *Ale-houses.* forth the Constables duty in order to the suppressing and punishing the odious sin of Drunkenness: but as to Ale-houses, &c. these things are further to be known.

That all that keep common Ale-houses, and sell Drink without Licence, shall forfeit Twenty shillings to the use of the Poor, it being a good Conviction if it appear by the view of a Justice or Major; or by the parties confession, or upon the Oaths of two Witnesses which the Justices are impower'd to Administer. Which penalty, upon Warrant from such Major or Justice, the Constable is to levy by Distress, *unlicens'd* Stat. 3. Car. cap. 3. and

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and in default of payment within three days to sell such distress, rendring the over-plus. And if the Offender have not Goods, or pay not the said penalty within six days, the Justice may commit such Offenders to the Constable to be whipp'd. And if the Constable or inferiour Officer shall not execute the punishment, he himself shall be committed to Goal, till the Offender be punished as aforesaid, or until such Constable shall have paid Forty shillings for the neglect of his duty, to the use of the Poor.

*Suffering
Tippling.*

By the Stat. of the 21. of King James, Ca. 7. All Constables and Church-wardens shall in their Oaths be charged to present the following offences against the Statute of 1. Jac. cap. 9. Which is, That all Inn-keepers and Ale-house-keepers that suffer any to continue Tippling in their Houses (except labouring men in Dinner-time, or Lodgers there, or upon sufficient grounds to be allow'd by two Justices) forfeits ten shillings to the use of the Poor: Or if they shall vend or sell less than a full Quart of the best Ale or Beer for a penny, or two Quarts of the small for one penny, they forfeit

Twenty-

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Twenty shillings to the same use [*But I conceive this part of the Statute stands repealed ever since the Additional Excise imposed on Beer and Ale.*] The Conviction in these Offences is upon view of the Major or Justice, or Oath of two Witnesses (but according to 21 Jac. 7. One Witness, or his own confession, is enough to convict any.) And the aforesaid Penalties upon a Warrant from the Justice, &c. are to be levied by the Constables and Church-wardens, but the Distress is not to be sold till after six days; and then in default of payment all that time, to be appraised and sold, rendring the overplus. If no Distress to be found, the Offender to be committed to Goal, till the penalty shall be paid. And if any Constable, Church-warden, &c. shall neglect to execute such Warrant for Distress, or to certify the Parties want of Goods within twenty days, such Officer for every such Offence, forfeits Forty-shillings to the use of the Poor, to be levied on their Goods by Warrant directed to any indifferent person from any one or more Justices, under their Hand and Seal.

D

Every

*Refusing to
Lodge.*

Stat. 5.

Edw. 4.

cap. 3.

Every Common Inn keeper, or Ale-house-keeper, refusing to lodge a Traveller, he proffering to pay ready money for his Victuals, &c. The Constable ought to cause him to be Indicted at the Assises or Sessions, where he may be Fined and Imprisoned. Or the Party grieved may bring an Action of the Case against the Inn-keeper or Ale-house-keeper. But they are not bound to Lodge, or find Victuals without ready money first paid, if required. *Cok. 9. Rep. fol. 87.*

*Rogues,
Beggars,
&c.*

A main Branch of our Constables Office, relating to the punishment of Beggars and Rogues, we shall the more enlarge thereupon. And first, let us see who by the Law are adjudged and deemed to be Rogues, Vagabonds, and sturdy Beggars.

Stat. 39.

Eliz. cap.

4. and

cap. 17.

43 Eliz.

cap. 2.

1 Jac.

cap. 7.

21 Jac.

cap. 28.

Resol.

Judges

13. 15.

Dalt.

Chap. 47.

1. All and every such Persons above the Age of Seven years, Man or Woman, Sole or Covert that wander from their usual place of abode; every where begging, or if they do not beg, if they wander and loiter abroad without a lawful Passport, or not being able to give a good account of their Travels are to be counted Rogues.

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2. All Scholars and Sea-faring-men, that beg, wandring Persons using unlawful Games, Subtile Crafts or Plays, or pretending themselves to have skill in Physiognomy, Palmistry or the like, or to be Fortune tellers, or Figure-casters.

3. All Proctors, Patent-gatherers, (except for Fire) Collectors for Goals, Prisoners or Hospitals wandring abroad, Fencers, Bearwards, Common Players of Interludes (or Droll-Actors) and Fiddlers, or Minstrels wandring abroad.

4. All Juglers (Hocus-pocus Gentlemen, and slight of hand Artists) Tinkers, Pedlers and petty Chap-men, and Glass-men. To which we may add our Scotch-Cloth men, wandring abroad, especially if they be not well known, or have not a sufficient Testimonial.

5. All counterfeit Egyptians (or Gypsies) not being Felons, all Persons delivered out of Goals, who beg their Fees, or otherwise do Travel begging; such as go to or from the Baths, and do not pursue their Licence; Souldiers and Mariners that beg, and counterfeit Certificates from their Commanders;

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all Labourers which wander abroad out of their respective Parishes, and refuse to work for wages reasonably taxed, having no Livelihood otherwise to maintain themselves; and such as go with general Pass-ports, not directed from Parish to Parish.

All these are accounted Rogues, Vagabonds, and Sturdy Beggars.

Besides these; All Servants that leave their Services (*viz.* out of one City, Town, or Parish, to serve in another) without the Testimonial requir'd by the Statute, or with a false one. And such Persons as are sick of the Plague (I conceive 'tis meant, if they belong to Houses wherein any are sick) wilfully going abroad in Company against the command of Officers, are to be punished as Vagabonds. But none are to be sent to the place of Birth, or last Habitation, but wandering Rogues: for those that beg in their own Parishes, or in the High-ways, without the appointment of the Over-seers, are to be sent to the House of Correction.

Of the Punishment of Rogues and Beggars.

1. All Constables are to use their best endeavours to apprehend all such Vagabonds, Rogues, or Sturdy Beggars, which shall be found and taken wandring, or begging, within their respective Precincts; or, they forfeit Ten shillings for every neglect. And if any other person bring a Rogue, or Beggar, to one of these Officers, he must take hold of him, and punish him according to Law, or otherwise he forfeits Twenty shillings.

Stat. 39.
Eliz.
cap. 4.

2. After such Rogues and Beggars are apprehended, the Constable, Headborough, or Tythingman, assisted by the Minister, and one of the Parishioners of the place; is to see them stripped naked, from the middle upwards, and that he be openly whip'd, until his, or her body be bloody.

3. After this whipping, the Parties must be sent away from Parish to Parish, or Tything to Tything, to the place of their Birth; and if that cannot be known, then to the place where they last dwelt, by the space of one

D 3 whole

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whole year before such punishment, there to be set to work; and if that cannot be known, then to the Town through which they last passed unpunished; and when they come there, if it cannot be discovered where they were Born, or last dwelt, then are they by that Constable (or, as some say, from Constable to Constable) to be conveyed to the House of Correction, or Common Goal of that County, to be employed in work, or placed in some Service, and so to continue by the space of one year; or in case they be not able in body, that Town is to keep them till they be placed in some Alms-house within the same County. But in order to this sending them away, such Vagabonds are to have a Testimonial under the Hand and Seal of such Constable, Tything-man, &c. and the Minister of the place, testifying the day and place of his punishment; the place to which he is to be conveyed, and the time limited for his passage thither; which time, if by his own default he exceeds, he is again to be whipped from time to time, till he arrive at the place limited. The substance of which Testimonial is to be entred

entred by the Minister in a Register Book kept for that purpose, on pain of Five shillings for every default.

The form of such Testimonial for Conveying Rogues, Vagabonds, and Beggars.

Laurence Lazy, a Sturdy, Vagrant Beggar, Aged about thirty years, short stature, black hair'd, and lean Visag'd, was this One and twentieth day of Aug. in the 28th. year of the Reign of our Gracious Sovereign Lord King Charles the Second, &c. openly whipped at Tunbridge, in the County of Kent, according to Law, for a wandring Rogue. And is assigned to pass forthwith from Parish to Parish, by the Officers thereof the next straight way to Tuddington, in the County of Bedford, where he confesseth he was Born (or dwelt last by one whole year, if the case be such) and he is limited to be at Tuddington aforesaid, within fifteen days now next ensuing, at his peril: Given under the Hands and Seals of J. S. Minister of Tunbridge aforesaid, and of John Curd, Constable, the day and year aforesaid.

And Note, That a Justice of Peace alone, may under his Hand and Seal make such a Testimonial, *Lamb. 2c6.*

If any Constable, Tything-man, or Head-borough, be found negligent in the due Execution of this Statute, in manner aforesaid, he forfeits Ten shillings, as we told you before; and all such persons as shall in any kind disturb or hinder such execution of the Law, forfeits Five pounds, and to be bound to the good Behaviour: and therefore, where a Rogue or Beggar is to be conveyed from Parish to Parish, 'tis a forfeiture of Five pounds for any Officer that shall refuse to receive them, or, that having received, do not convey them to the next Constable in the way that they are to pass.

Every person shall apprehend such Rogues as he shall see or know resort to his House, to beg or receive any Alms, and shall carry them to the next Constable, or otherwise shall forfeit Ten shillings.

Constables or Tything-men neglecting to search for Rogues upon the Justices Warrant, or failing to appear at their meeting, to give an account what Rogues have been punished, or sent

Resol.
Judges.
Sect. 13.
and 14.
Stat. 1.
Jac. cap.
7.

Stat. 7.
Jac. cap.
4.

sent to the House of Correction, or neglecting to convey such to the House of Correction, as by Warrant are to be sent thither, are liable to such Fine as the Justices think fit, not exceeding Forty shillings.

Any Justice of the Peace may reward any persons who shall apprehend and bring before him any Rogue, Vagabond, or Sturdy Beggar, by granting to such persons under his Hand and Seal to the Constable, or Tything-man of the place, through which the Rogue did pass unapprehended; ordering him to give such person two shillings for every Rogue so taken. And if the Constable refuse to pay it, the Justices shall proceed against him according to the Statute, 1 Jac. cap. 7. and compel him to pay his forfeiture; and out of the same to allow the said two shillings, with such further allowance, for loss of time, as the Justice shall think fit.

If any person shall apprehend any Rogue on the confines of any County, who passed through any Parish of another County unapprehended, then the party must carry him to some Justice of Peace of the said County, through which he passed, who (upon a Certifi-

Stat. 1.
Jac. 7.
14 Car.
2 cap. 12.

Stat. 14.
Car. 2.
cap. 12.

cate of some Justice of the County, where such Rogue was Apprehended, is to grant his Warrant to the Constable, &c. which if he refuse, the Justice is to proceed against him for ten shillings forfeited by neglect, and cause him to pay the same, or so much thereof as he shall think fit, to the party for loss of time.

Ibid.

Whereas Constables, Tything-men, &c. are at great charges in relieving, carrying with Passes, and conveying Rogues, &c. It is Enacted, that all Constables, &c. so out of purse, with the Church-wardens, Overseers of the Poor, and other Inhabitants of the Parish, may make a Rate, to be confirmed under the Hands and Seals of two Justices: And if any person refuse to pay such Rate, then the Constable by Warrant from two Justices of Peace, may levy the same on their Goods, rendring the overplus, &c.

Stat. 39.

Eliz.

cap. 4.

1 Jac.

cap. 7.

Dalt.

Chap. 47.

Two Justices of Peace (whercof one of the *Quorum*) by Warrant under their Hands and Seals, may cause to be levied all and every the said Fines, Forfeitures, or Penalties against persons neglecting their duty, in Apprehending and Punishing Rogues and Beggars,

Beggars, by Distress and Sale of the Offenders Goods, after due Conviction, which must be either by confession of the Party, or proof of two Witnesses before the said Justices.

And because the Execution of these Laws is so far required in these Laws, therefore for their better direction in placing and sending of Rogues, these things (said to be resolved by the Judges at *Westminster*, soon after the making of the said Statute of 39 *Eliz.* cap. 4) are to be observed.

1. If a Rogue say he was Born at such a place, and it cannot be made appear to the contrary, he must be sent thither.

Resol. Judges. Sect. 4. and 5. Dalt. cap. 47.

2. If the Husband or Wife have an House, and one of them, or both, Rogue about, they ought to be sent to the Town where the House is: And so of an Inmate.

3. The Wife, and all Children under seven years of age, being Vagrant, must be sent to the Husband; and if he be dead, then with the Wife where she was Born, or dwelt last; And Vagrant Children above seven years old, must be sent to the place of their Birth: And if the Vagrant Parents, with their

Child.

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Children under seven years of age, be placed at the place of Birth of the Parents, or their last dwelling; if afterwards the Parents, or either of them dye, or run away, yet the Children once settled, must remain there still, and may not be sent to their place of Birth, though after they grow to the age of seven years.

4. The Wife being a Vagrant, ought to be sent to the Husband, though he be but a Servant in another Town

The Rogue, whose place of Birth, or dwelling, cannot be known, having a Wife, or Children under seven years of age, they must go with the Husband to the place where they were last suffered to pass through without punishment, where the Children must be relieved with the work of their Parents, though such their Parents be committed to the House of Correction.

6. Constables are not to post away such Vagrants as shall be taken by them, or sent unto them, that are desperately sick, or Women ready to be delivered; nor to deliver them to the next Constable after Sun-set.

7. If any of these Rogues shall appear to be dangerous to the inferiour sort

fort of people, as threatning, or offering any violence to them, or that will not be reformed from this Roguish life, as where he hath once been whipped and sent home, and doth afterwards wander again : Or when he shall say he was born and dwelt last in such a place, and in truth it is not so : In these Cases he is to be accounted *An Incurrible Rogue*. And 'tis the duty of all Constables, meeting such person within their Liberties, to carry him before some Justice of Peace, there to be ordered by him according to the Statute.

Lastly : Persons that shall run from their Families, and leave a Charge to the Parish, are to be punished as incorrigible Rogues ; and he that threatens so to do, may be sent to the House of Correction, unless he can give Sureties for the discharge of the Parish.

All Artificers or mechanick Trades-
men, fit to labour by the day, the Con-
stable may, upon request to him made
by any person that wants help in Hay,
or Corn-harvest set on work ; and if
they refuse, he may set them in the
Stocks two days, and one night. And
the Constable neglecting his Duty here
in, forfeits Forty shillings. By

*Labourers
and Ser-
vants.
Stat. 5.
Eliz.
cap. 4.*

Ibid.

By the same Statute it is provided, That no person retained in Husbandry, or other Arts therein mentioned, shall depart, after the time of his Retainer therein expired, out of the City, Town, or Parish where he last dwelt, to serve in another, without a Testimonial in a Town Corporate, under the Hands and Seals of the chief Magistrate, and two Housholders, and in the Country, under the Hands and Seals of the Constable, and two Housekeepers of the Town or Parish where he served last; which Testimonial is to be Registred by the Minister, for which he is to have Two pence, and then to be delivered to the party.

But these Testimonials are now very seldom used, which is one great reason that people are so often deceived with bad Servants, and certainly deserves more to be regarded, the Law being very penal therein: For the Master that retains a Servant without such a Testimonial forfeits Five pounds and every Servant which sheweth not such a Testimonial to the chief Officer in a Corporation, or to the Constable, Minister, or Church-wardens where he is to dwell, may be imprison'd till he can get

Ibid.
And Dalt.
Ca. 3 l.

get one, which if not procured within One and twenty days, or if he produce a false, he is to be whip'd, and used as a Vagabond.

A President shewing the Form of such Testimonial.

Memorandum, *That* John Lock, *Servant* to Henry Piggot, of the Parish of Chiddingstone, in the County of Kent, *Husband-man*, is *Licensed* to depart from his said Master, and is at his Liberty to serve elsewhere. according to the Statute in this Case made and provided: In Witness whereof we have hereunto set our Hands and Seals, the 24th. day of August, in the 28th. year of the Reign of our Sovereign Lord, King Charles the Second, Anno Domini. 1676.

John Ashdowne, Constable of Chiddingstone.

John Harrison, } *House-holders*
William Colegate. } *there.*

Note,

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Note, If the Servant lived with a Woman, then say, Is licensed to depart from his Mistress or Dame, (as she is) and if his Master be not an Husband-man, but a Tailor, Carpenter, or the like, name him accordingly in the Testimonial.

Hedge-
breakers,
Wood-
stealers.
St. 43.
Eliz.
Ca. 7.

All such as shall be convicted before a Justice of Peace, for cutting and taking away of Corn growing, robbing of Orchards, breaking Hedges, and their procurers and receivers knowing the same, if they cannot give the party Injured such satisfaction as a Justice of Peace shall think fit, the Justice may then commit him to the Constable to be whipt for the first offence, and the like for the second; and if he refuse or neglect to see the same done accordingly, the Justice may commit such Officer to Goal, till by his procurement it be executed on the Offender. Not, only Constables and Headboroughs, but any other persons, in every County, City, Town Corporate, or place where they shall be Officers and Inhabitants, are impowered to apprehend such persons as they suspect for having, carrying, or conveying away any burthen

St. 15.
Car. 2.
Ca. 2.

then or bundles of any kind of Wood, Under-wood, Poles, or young Trees, Bark of any Trees, Gates, Stiles, Posts, Pales, Rails. Hedg-wood, Broom, or Furz. And any Constable, Headborough, &c. by Warrant under the Hand and Seal of one Justice, may enter into the Houses, Out-houses, Yards, Gardens of such persons as they suspect : And where they find any Woods, Underwoods, &c. to Apprehend the Parties suspected, for cutting the same ; and those also in whose Houses or places any such woods, &c. shall be found, and carry them before a Justice ; to whom, if the party cannot give a good and satisfactory account how he came by the said wood, &c. by the owners consent, or shall not within such time as the Justice appoints, produce the party of whom he bought it ; or some Credible Witness to depose upon Oath such sale of the said Wood : Then such person shall be deemed convicted of the cutting and spoiling wood, &c. within the meaning of the Statute of the 43. of Eliz. aforesaid. And for the first offence, if they do not give the Owner such satisfaction, and within such time

as

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as the Justice shall limit, and likewise pay over and above down presently, to the use of the Poor of the place, such a sum of money, not exceeding Ten shillings, as the Justice shall appoint: Then the said Justice may commit such party to the House of Correction for any time, not exceeding one Month, or else to be whip'd by the Constable. And if he offend again, then to be sent to the House of Correction for one whole Month, there to be held to hard labour; and for the third offence, to be punished as an incorrigible Rogue.

Ibid.

If any person buy Wood, &c. of any justly suspected to have Stolen the same: If on examination before a Justice, it be found so bought, the Justice may order the Buyer to pay the treble value thereof to the party from whom it was taken; and in default of present payment, grant a Warrant to the Constable to distrain for it; and for lack of distress, to commit the party to Goal at his own charge, there to remain one Month without Bail.

But Note, None are to be punished by this Statute, who have been punished by any former Law for the same offence; nor is any to be questioned unless

less it be within six weeks after the offence committed.

CHAP. VIII.

Shewing the Constables Office concerning Weights and Measures. Nets and Setting Dogs, Malt-making, Tobacco-planting, Physicians, Plague, Forraign Laces, Irish Cattel, Purveyancing, Soldiers, Prisoners, High-ways, Clothiers, Sea-fish, Vessels, County stock, Gaming, &c.

IN every City, Borough, and Market-^{weights} Town, there ought to be common ^{and Mea-} Weights and Mesurer Sealed, at which ^{ures.} the Inhabitants may freely weigh, and ^{Stat. 8.} the chief Officers of such places, whe- ^{Hen. 6.} ther they be Constables, Bailiffs, or ^{cap. 5.} others, are upon request to mark and ^{0-11 Hen. 7.} sign such Weights and Measures to any ^{cap. 4.} of the Kings Subjects, taking for the marking of every Bushel, one penny.

Constables are required to search and ^{Stat. 22.} examine if any buy or sell by any other ^{Car. 2.} Bushel ^{cap. 8.}

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Bushel than *Winchester* measure, containing, eight Gallons to the Bushel, or Strike, Sealed by the Clerk of the Market ; and if any person doth not strike the same even with the brim : And any Constable may seize and break such other Measure, and present the Offender at the next Sessions.

*Nets and
Setting-
Dogs.
Stat. 7.
Jac. cap.
11,*

Constables or Headboroughs upon a Warrant under the Hands and Seals of two or more Justices of the Peace, have power to search the Houses of persons suspected (except those that keep Warrens, or have Forty pounds *per annum* of Inheritance, or are worth 400 pounds in Goods) for Setting-Dogs, or Nets to take Pheasants and Partridges, and may take away their Dogs, and cut their Nets.

*Malt-
making.
Stat. 2.
Edw. 6.
cap. 10.
21 Jac.
cap. 28.
3 Car. 1.
cap. 4.*

The Constable and Bailiffs of any Town ought to view and search all Malt made, or put to sale within their Liberties ; and if they find any ill, or deceitfully made, or mingled, they may, with the advice of one Justice of Peace, sell the same at such rate as the Justice thinks fit.

Malt is said to be evil or deceitful : *First*, When in the making thereof in *June, July, or August*, it has not seven-
teen

teen days, and in any other Months three weeks at the least. *Secondly*, When by rubbing, treading and fanning, they have not taken out of every Quarter half a Peck of dust, or more. For the neglect of which, the Seller forfeits Twenty pence a Quarter. *Thirdly*, When 'tis made of Mowburnt, or spired Barley, or mixed good and bad together, and for this the Seller forfeits Two shillings a Quarter; but they must be Prosecuted within one year, and it extends not to such as make Malt for their own provision only.

All Sheriffs, Justices, and Constables, upon information that there is any Tobacco Set, Sown, or Planted, or growing within their Precincts, are within ten days to cause the same to be burnt, pluckt up, or destroyed; unless it be in a Physick-Garden, or not exceeding half one Pole in a place.

Constables in London, and seven miles round are to be aiding to the President of the Colledge of Physicians, and persons Authorized by the said Colledge for the due Execution of the said Laws relating to the Physicians, Apothecaries, and Chirurgeons.

If

*Tobacco
planting.
Stat. 12.
Car. 2.
cap. 34.*

*Physicians
Stat. 1. M.
par. 1.
Sess. 2.
cap. 9.
23 H. 8.
cap. 1.*

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Plague.
Stat. 1.
Jac. cap.
31.

If a person dwelling, or being in a House Infected with the Plague, be commanded by the Constable to keep the House, and shall notwithstanding wilfully go abroad, having any Infectious sores upon him, it is Felony. And though he have no such sore, he is to be punished as a Vagabond, and be bound to the good Behaviour.

Ibid.

Every Constable neglecting to levy the money as they are appointed by the Justices, or chief Magistrate of Towns Corporate, according as shall be taxed for the Relief of the Poor, Infected with the Plague, forfeits for every offence Twenty shillings.

Forrein
Bone-lace,
&c. St. 14.
Car. 2.
cap. 13.

Constables upon Warrants to them directed, are to search within their respective Precincts, in the Shops, Warehouses and Dwelling-houses of such persons as shall be suspected to have any forreign Bonelaces, Cut-works, Embroideries, Fringes, Bandstrings, Buttons, or Needle-works made beyond the Seas; and to seize the same.

Irish
Cattle.
St. 18.
Car. 2.
cap. 2. &
20. Car. 2.

Constables, Tythingmen, Headboroughs, Church-wardens, or Overseers of the Poor; or any of them within their respective Liberties, Parishes or places, are to take and seize all great

great Cattel, Sheep, or Swine, or any Beef, Pork, or Bacon, brought from *Ireland*, the one half to be disposed of to the use of the Poor of the Parish where they were seized; the other half to his or their own use that shall seize the same, &c. And if there shall be any fraudulent agreement, or unfaithful connivance in the first seizure, they may lawfully be afterwards seized again, wherever they shall happen to be, the former seizure in another Parish notwithstanding.

Formerly there were divers particulars incident to the duty of Constables, by divers old Statutes concerning purveyance, or taking up Provisions and Carriages for the King and his Court; but now those Statutes are obsolete and of no force: For by a late Statute the method for these things is thus provided. That the Clerk of the Kings Carriages, three days before his Majesties Arrival, shall give notice to the two next Justices to the place, to provide such a number of Carts and Carriages, which the Constables upon their Warrant are to press and provide; each Cart furnished with four able Horses, or four Oxen and two Horses, to be paid six

*Purvey-
ance or
Carriages
for the
King.*

St. 13.
Car. 2.
cap. 8.



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fix pence a mile for every mile they go laden, to be paid in hand at lading, and not to go above one days Journey: Which if any shall refuse without reasonable cause, he forfeits Forty shillings, to be levied by the Constable on a Warrant. And if the Justice or Constable take any bribe to spare any fit person from such Carriages, or press more Carriages than directed, he forfeits Ten pounds.

2 Car. 2.
cap. 24.

No Pre-emption (or priviledge of buying before others) shall be henceforth allowed the King, or any of the Royal Family in or out of any Market, but the Subjects may dispose of their goods as they please: And if any shall make purveyance or impress any Carriages otherwise than as aforesaid, one Justice and the Constable at the request of the party grieved, may commit him to Goal, and Indict him next Assizes or Sessions, or the party grieved shall recover treble damages and treble costs on an Action.

Stat. 14:
Car. 2.
cap. 20.

Two or more Justices by Warrant from Commissioners of the Navy, or Master of the Ordinance, are to cause Constables to provide Carriages for twelve miles round from the place of lading.

lading, who are to have twelve pence a mile for every load of Timber, and eight pence a mile for every Tun of other Commodities; and such as refuse, being warned, to send their Teams, forfeit Twenty shillings, but they must be paid in hand, and are to travel no further, nor work any longer than the Justices shall order.

Constables and Church-wardens are to levy by distress and sale all moneys rated on any person within their Liberty, for the relief of the poor maimed Souldiers and Mariners, and pay it to the High Constable, or they forfeit Twenty shillings.

Maimed Souldiers.
Stat. 43.
Eliz.
cap. 3.

In the same manner they are to levy what is rated on any for the relief of the Prisoners in the *Kings Bench* and *Marshalseas*, or for the succour of Hospitals and Alms-houses, and to pay it to the High Constable, on pain of Ten shillings.

Relief of Prisoners.
Ibid.

Four Justices are Authorized to allow a Tax for repair of any decayed Bridges in the High way, which must be Assessed by the Constable and two of the sufficientest Inhabitants in the Parish.

Bridges.
St. 21.
Hen. 8.
cap. 3.

High-way.
 St. 2. & 3.
 Ph. & Ma.
 cap. 8.

Stat. 14.
 Car. 2.
 cap. 6.

Constables, Tything-men, and Church-wardens of every Parish are upon the *Munday* or *Tuesday* in *Easter-week*, with the consent of the major part of the Parish then present (notice having been given the Sunday before in the Church) to chuse two or more Surveyors for their High-ways, and give notice thereof to the parties chosen, in writing, under the penalty of Five pounds to be forfeited by the same Constable, &c. in default thereof.

Ibid.

Constables of *London* and *Westminster*, upon Warrants to them directed in that behalf, are to levy by Distress all Penalties forfeited by any person, about repairing the High-ways and Sewers in and about the said Cities, and for want of distress, or non-payment within six days after demand, the offender may be committed to Goal till payment.

Stat. 12.
 Car. 2.
 cap. 12.

Constables (as well as Surveyors) wilfully suffering any travelling Wagon or Cart to go or pass through any part of their Liberties, in any Road or publick High-way with above five Horses in length, forfeit such Fine as a Justice shall think fit, not exceeding Forty

Forty shillings; of which sum of forty shillings every owner of such Cart or Waggon, forfeits one third part towards mendment of the ways; another third part to the Poor; and the last third part to him that discovers the Offender.

Of the Surveyors duty we shall treat particularly hereafter.

Constables on request to them made, are to be aiding and assisting to the Wardens and Assistants for regulating the trade of Worstedes, and other stuffs called *Normich* stuffs, made within the City of *Normich*, or County of *Norfolk*. Also within the West Riding of the County of *York*, they are, upon Warrant from the Justices of Peace, Master and Wardens of the Corporation of Clothiers, within the said Riding, or any thirteen of them to levy all such Fines, Penalties, and Forfeitures as shall grow due from any Clothier by Virtue of that Statute of the 14. Car. 2. cap. 5.

Clothiers
Stat. 14.
Car. 2.
cap. 5.

Stat. 14.
Car. 2.
cap. 31.

Where any offence is committed about the erecting new Weirs along the Sea-shore, or in any Harbour, or Ha-

Sea-fish.
Stat. S.
Jac.
cap. 12.

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ven, or Creek, for the destruction of any Spawn or Sea-fish in any Wear, or other Engine, within five miles of the mouth of any Haven; or with fishing in any Hay-net or Drag-net under three Inches mesh, the Constables and Church-wardens, by Warrant, may levy the forfeiture by distress or sale of the Offenders goods, returning the over-plus; the penalty is Ten shillings, and the loss of their Nets.

Vessels.

St. 23. H.
8. cap. 4.

All Majors, Sheriffs, Bailiffs, and Constables (where no Wardens of Coopers be) or impowered to search, view, and gage Barrells, Kilderkins, Firkins, and other Vessels, to be made within their Liberties; and to have the advantage as the Wardens of Coopers in London have.

*County
Stock.*

Stat. 13.
Eliz. 2.
& 3.

The Constables and Church-wardens of each Parish, if the Parishioners disagree, have power to rate and allot within their Parish their Assessment for the Shire stock, wherewith the said Parish was charged at the Quarter-Sessions, and may levy the same upon any of the Parishioners by distress and sale of his goods, restoring the over-plus.

Every

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97

Every Major, Sheriff, Bailiff, Constable, or other Minister of Justice, within their several limits, on pain of forfeiting Forty shillings for every default, ought to search once every month at the least, Places where unlawful games shall be used, and may Arrest and Imprison both the Keepers of such places, and the Gamesters; and if any of the said Officers shall know of any Tradesman whatsoever, Mariner, Fisher-man, or Water-man, that doth play at Tables, Dice, Cards, Tennis, Quoiting, Logating, or any other unlawful Game out of *Christmas*, or out of their Masters house in the *Christmas*, unless by the Masters License, that hath one hundred pound *per annum*, may commit them to Prison, till they give Sureties to the King, not to use the same again.

Gaming.
St. 23. H.
8. 3.

CHAP. XI.

The Power and Duty of High Constables alone.

Stat. 4.
Ed. 4.
cap. 1.

Clothiers shall pay their Carders, Spinners, and other Labourers in lawful money, and not in Wares, under pain to forfeit three times so much as their wages : And must deliver them their Wool by due weight : And Carders, Spinners, Fullers, Dyers, Sheremen and other Labourers, shall do their work faithfully, on pain of forfeiting double damages. And the Constable of the Hundred may hear and determine the complaints therein on each side, by due examination of the parties, and for non-payment of the said forfeitures, may commit those they shall find guilty to the Goal, till the same be paid.

Stat. 39.
Eliz.
cap. 20.

The said High Constables are empowered to enter into any House, Lands, or other place to search for any Tenters, Ropes, Rings, Head-wrenches,
or

or other Engines for stretching of Cloth ; and if they find any, to deface them : And if the owners shall afterwards use them, these Officers may seize and sell them; distributing the money to the Poor.

High Constables must pay over what mony they received from Church-wardens Assessed on any Parish for relief of poor Prisoners, under the penalty of Five pounds, at the next Quarter Sessions, to the Collectors appointed by the Justices at the Sessions, appointed to receive it: As likewise what they so receive for the relief of poor Prisoners, in the *Kings Bench* and *Marshalseas*, under pain of Twenty shillings; and the same thing for monies received, for maimed Souldiers and Mariners, on pain of Forty shillings.

Stat. 14.
Eliz.
cap. 5.

Stat. 43.
Eliz.
cap. 8.

The said High Constables are likewise to present unto the Justices at their Sessions or monthly meetings of their Divisions, and cause their Constables, Headboroughs, &c. in their respective Liberties, to make return to them of,

1. The Names, Surnames, additions,

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ons and qualities of all Popish Recusants, as well House-keepers as Lodgers, residing within their precincts.

2. Such as continue Tipling in Inns or Ale-houses, especially on the Lords-day or Holy days, and such as they find drunk, together with those that entertain them.

3. All profane Swearers or Cursers, and the number as near as they can of their Oaths. Victualers selling Beer or Ale without License. Persons that keep Gaming places, and the names of those that play there.

4. Refusers to Watch or Ward, harbourers of Inmates or of such as are like to charge the Parish.

5. The defaults of Petty Constables for not punishing Beggars, Rogues, &c.

6. The names of such as live idly without Estates, at their own hands, suspicious Persons, Whores, Night-walkers, Mothers of Bastards like to charge the Parish; such as refuse to take poor Parish Children Apprentices.

7. Defects of High-ways and Bridges, the Names of those that should repair them, Scavengers neglecting

lecting their duties, and the Names and places of such as commit common Nuisances, by laying down soil, dirt, or ashes in the Streets, or refusing to pave the Streets where usually paved.

8. Of Bakers selling Bread too light, Brewers vending Ale to Unlicensed Victualers, Forefallers and Regrators of any kind of Victuals in Markets.

Lastly: Whoever can prove any of the said Offences, are to be summon'd to such Sessions to give Testimony.

And so much shall suffice for the Office of Constables.

T H E
O F F I C E
O F
Church-wardens.

CHAP. I.

The Nature of their Office.

What.

CHurch-wardens are Officers, yearly chosen to take Care, see to, and preserve the Church and Goods belonging thereunto, as Books, Communion Cups, and other decent Ornaments and Furniture of the Church, which they find there at their coming into this Office, or at any time during its continuance.

When

When this Office first begun, I shall not trouble my self, or the Reader, to enquire, because that pains is hardly like to be rewarded with satisfaction. 'Tis agreed, that they are very ancient, and are to be chosen in every Parish by the joynt consent of the Minister and Parishioners, wherein if they cannot agree, then the Minister shall chuse one, and the Parishioners another, and this is to be done in *Easter week*.

But where an ancient Custom of chusing is in any Parish contrary to this Canon, such Custom is still to be observ'd, which we have many Presidents, Prohibitions having been granted; as Warners Case, p. 17. Jac. B. R. Evelins Case. 15 Car. 1. B. R. &c.

How chosen, Canons 1 year of K. James. Can. E. 9, & 10.

An Attorney cannot be made a Church-warden: If he be chosen, and refuse, and so be used in the Spiritual Court, a Prohibition shall be granted, as in *Wilsons Case, p. 14. Car. 1. B. R.*

These Church-wardens having the charge of the Church Furniture, and it being part of their duty, if there be any want of those things to provide them for this purpose (in favour of the Church),

12 Hen.

7. fol. 27.

*Finches**Law. l. 2.*

cap. 17.

Church) the better to enable them herein, the Law doth make them a kind of Corporation. That is to say, they are persons able by the Name of Church-wardens to purchase or take moveable Goods or Chattels, and to sue or be sued at Law, for, or about such Goods for the use and Benefit of their Parish; and therefore,

A man in his life time may give, or bequeath by his last Will, money, or other moveable things to the Church-wardens or Parishioners of a Parish, either for repairs about the Church, or to buy decent Ornaments for the same: *Book of Entries, fol. 576.*

*Finch,**ubi supra,**Kitchin.*

P. 277.

But they cannot take or prescribe to have Lands to them and their Successors, nor can they have any Action at Common Law to recover any Goods so given or bequeathed to them, or otherwise belonging to them, of which they never had possession (but it seems in such Case they have their remedy only in the Spiritual Court, or in equity.) But if the Church-wardens are once possessed of any Goods or Ornaments belonging to the Church, and afterwards the same things are taken from them, then they have the same

Equity.

reme-

remedy at Common Law as other men, viz. To Indict the takers, if Stolen; or if otherwise converted or abused, as a Bell broken, &c. to sue them by Action, in which they recover Damages, not to their own but the Parishes use. And though the Church-wardens from whom the Goods were taken, be out of their Office, yet it seems their Successors may sue and recover as aforesaid.

*Hadma's
Case.
3. part.
Crook.
Rep.*

This vesting of Goods in Church-wardens, is so far favour'd by the Law, that it will sometimes create a Gift to them, even without any writing or words at all: For if a man buy a Bell, and hang it up in the Steeple, or make and set up a Pew in the Church, without any express Donation, yet by the very act they become so dedicated to the Church, that if he, or his, afterwards should go to take them away, or remove them, the Church-wardens might sue them for so doing.

*10. H. 4.
fol. 9.
Kitchin.
p. 277.*

Yet these Officers have no such property in the Goods of the Parish, as thereby to have power to give, sell, release, hurt, or impair them: For if they do so, the Parishioners (though their year be not up) may elect new ones

*3 Edw.
4. fol. 7.*

ones, who may have an account against their Predecessors.

Tr. 12. If the Organs be taken out of the
Jac. in B. Church, the Church-wardens shall
R. per Ch- have an Action of Trespafs for the
nam. same, though they were taken by the
 Vicar himself, for they belong to the
 Parishioners, and not to the Parson.
 Nor can he sue any person that takes
 them in the Ecclesiastick Court.

B. H. f. 9. But as touching any Estate of Lands,
 or profits of any Lands, the Church-
 wardens are not to intermeddle. And
 therefore, if any person shall break the
 Walls, Windows, or Doors of the
 Church; cut down the Trees in the
 Church-yard, or eat up the grass there;
 in this Case, not the Church-wardens,
 but the Parson or Vicar must bring the
 Action.

With and If the Church-wardens present in
Pannels the Ecclesiastical Court that **I. P.** one
Case. M. 16 of their Parishioners is a railer, and a
Jac. in B. sower of discord amongst his Neigh-
G. bours, a Prohibition lies to stop their
 Suit; for this Case belongs to the Ju-
 risdiction of the Leet, and not to the
 Spiritual Court, unless such railing
 were in the Church, or Church-yard.

If they sue *M. W.* in the Ecclesiastick Court, for that he, and all those following that Estate, used to treat the Parishioners with Cakes and Ale, &c. at their going in Proceſſion, a Prohibition lies, for that this claim is in the nature of a Corrody, and not to be ſuffer'd.

Ch. of
Liſſing-
ton's Caſe.
Hil. 15.
Car. 1.
in B. R.

The Church-wardens are to repair the Seats in the Church, but the diſpoſal of them who ſhall ſit in them, belongs of common right to the Ordinary (or Biſhop) of the Dioceſs, ſo that he may place or diſplace them as he pleaſe; except

*Seats in
the Church.*

1. The Seats in the Chappels belonging to Noble men.

*Rolls Caſes
part. 2.
fol. 288.*

2. Where a Man and his Anceſtors having ſuch an Estate, have uſed to repair a certain Seat or Iſle of the Church, and to ſit there, and none elſe; there the Ordinary cannot diſplace him, but a preſcription of ſitting there, is not good without preſcribing to repair alſo.

CHAP. II.

*The Church-wardens Duty about
Reparations, making of Rates
and Presentments, and in what
things they are to joyn with the
Overseers or Constables.*

CHurch-wardens by the Common Law are bound to take care that the body of the Church, and the Tower (or Steeple) be from time to time sufficiently repaired; but if the Chancel (which in most, if not in all places, is to be repaired by the Parson) or any Isle, or part of the Church, which any man claims by prescription to himself, or his House, be in decay, the Church-wardens are not bound to repair it.

37 H. 6. They are likewise to take care that
30. 12. H. the Church and Church-yard be kept
7. 10. decent and clean; to provide Books
Canon 20. of Common-Prayer, Books of Homilies,
et alius. a Parchment Book for Registring Christ-
nings, Weddings, and Burials; as also
Fents,

Fonts , Pulpits, Tables, Chests for Alms, Communion Cups, and other requisite Ornaments and Furniture, and a Chest with three Locks and Keys for keeping the same in, and Bread and Wine for the Sacrament, according to the number of the Communicants.

For defraying the necessary charges of these things, they may impose Rates upon the Parish ; which must be done by the Church-wardens, with the assent of the major part of the Parishioners, upon a publick warning given them before to assemble to that purpose. But if upon such fair notice the Parishioners will not come, it seems the Church-wardens, and Over-seers of the Poor alone, or the major part of them may make the Rate.

*Justices
Case.
Coo.
Rep. 15.*

But here we must distinguish between Church Reparations, and Church-Ornaments or requisite accommodations for the Worship and Service of God in a Church. Towards the charge of the first, a person is chargeable in respect of his Lands, towards the last only, in respect of his dwelling or habitation and personal Estate.

The Exact Constable.

1. Under the Term Church-Reparations, are comprehended, the Walls of the Church, and Church-Steeple, the Church-yard, Walls of stone or brick, or rails, as the custom is; the Windows, Iron-bars and Glass; the Roof of Timber, with Laths, Nails, Priggs, Dogs and Bolts of Iron; the Covering of Lead, Tile-slates, or Shingles; the Floor with Stone or Paving-tile; the Doors with Locks and Keys, Stairs, Floors, Bells, Wheels and Ropes in the Steeple. The Pulpit and the Pews, or Seats not made by private men by custom. All these are to be done by Land-rate, though the Occupier of such Lands lives in another Parish.

2. By Church Ornaments, &c. are meant, the Communion-Table, and Coverings thereof; the Communion Cups, the Bread and Wine, the Bible and other Books appointed by Law; the Surplice, Pulpit-cloth and Cushion, washing the Communion-cloths, Candles when there is occasion. The Clerk and Sextons Wages, and the expences of Church-wardens and Side-men about the necessary affairs of the Parish. And all these are to be raised
ratably

ratably by the Parishioners, and not by Out-dwellers.

And here Note, That though a Man Inhabiting one Parish, and having Lands which he uses and occupies in another, may be charged for Church-repairs to the Parish wherein the Lands lie, because he may come there when he lists, and is charged in respect of the Land: Yet if he Lease out this Land in the other Parish, reserving Rent, he shall not then be charged in such other Parish, because there is now a Parishioner and Inhabitant who may be charged.

Where there is a Chappel of ease in a Parish, and part of that Parish have used time out of mind, to repair such Chappels, and there to hear divine service and marry; only they always buried at the Mother-Church, here they must still Contribute to the Repairs of the Mother-Church; for the Chappel was erected only for their ease, not to prejudice the rest of the Parish.

If the major part of the Parish agree to have a Bell more than they were wont to have, (or it seems, if they will have an Organ the Law is the same) which is bought, and they make a Rate

Andrews
Case.
Trin. 11.
Jac. in C.

Mich. 13.
Jac. in C.
R. Heb.
Rep.

M. 2. Car.
1. in B. R.

The Craft Constable.

Rate for paying for it ; this shall bind the rest of the Parishioners, though they never consented to, or did oppose it, otherwise a few covetous, obstinate people might hinder whatever should be intended for the Churches Ornament.

Church-wardens of Arundels Case, in C. B. P. 28. Car. 2.

As to the Church-wardens presentments in the Ecclesiastical Courts, the practice usually is to Swear them to present, according to a certain Book of Articles, at the same time delivered to them by the Bishop of his Surrogate : But where persons refusing to take such Oath, have been excommunicated, divers Prohibitions have of late been granted, commanding the Bishops to take off such their sentences, because the imposing of such Oath is against Law, as well for that Ecclesiastick Courts, by the Common Law, have not power to Administer an Oath in any other caules, but such as are either Matrimonial or Testamentary : As also because the same is forbidden by the Statute, *Car 2.* which took away the Oath *Ex officio.*

But though they may not be compelled to take such Oath, yet if they shall not present according to the Articles

ticles delivered, no doubt but they may for such their neglect be prosecuted in the Ecclesiastical Court; and in that case no Prohibition lies.

But by the Canons themselves, Canon. Church-wardens or Sides-men are not ^{116.} bound to exhibit their presentments above once a year, where it hath been no oftner used: Nor above twice a year in any Diocess whatsoever, except at the Bishops Visitation; for which presentment, the Register shall not take above Four pence for one year, on pain of a months suspension from his Office for every offence. But the Church-wardens may voluntarily present oftner if they please,

One of these two times is to be about ten days before Easter: And the Parson or Vicar is to joyn with them in their presentments; and if they refuse, then the Parson or Vicar (or in their absence the Curate) may themselves present offences to their Ordinaries at all such times, or as oft else as they find occasion.

Can. 113.
118.

Church-wardens, &c. after their presentments exhibited at any of the two times aforesaid, or when else they do it, shall not be any farther troubled for

Can. 119.
.33. 1123

The Craft Constable.

for the same, except it evidently appear that they did; willingly and wittingly omit to present some publick offence or crimes which they know committed, or could not be ignorant that there was then a publick fame of them; or unless there be very just cause to call them to complain their former presentments. And in case of wilful omission, the Ordinary shall proceed against them (says the Canon) as in cases of perjury is used in the Ecclesiastical Court, *De hoc tamen quere.*

Furthermore by the Canons.

Can. 19.

Church-wardens are to see that all their Parishioners resort to their Parish-Church duly all *Sundays* and Holy daies, and continue there the whole time of Divine Service, in which time they are not to permit any to walk, stand idle, or talk in the Church or Church-yard: They shall likewise call upon such as neglect coming to Church, and if they amend not in such admonition, they must present them.

Can. 88.

They are to suffer no Plays, Feasts, Banquets, Suppers, Church-Ales, Drinkings, Temporal Courts or Leets, Lay-

Lay-Juries, Musters, or other profane usage to be kept in the Church, Chapel, or Church-yard : Nor the Bells to be rung superfluously on Holy-days or Eves abrogated by the Common-prayer Book. Nor at any other time without a good cause to be allowed of by their Minister and themselves.

They shall not suffer any man to Preach within their Churches or Chapels, but such as shall shew their License. And also they are to see that the peace be duly kept in the Congregation; and that all persons excommunicated be kept out of the Church.

Can. 50.
& 8. 5.

The Church-wardens upon the expiration of their year, or within one month after, are to give a just account of what they have received, and disbursed, and to deliver up what money, or other things belonging to the Church, they have remaining in their hands, to their successors, by Bill indented : And if they refuse so to do, they may either be presented at the next Visitation Court; or the succeeding Church-wardens may have an Action of Account against them for the same at Common Law, wherein they shall be allow'd all necessary disbursements,

Can. 8. 9.

8 Ed. 4.
fo. 6.

The Craft Constable.

ments, and expences incident to their Office about the affairs of the Parish, and the rest will be recovered against them.

Cases wherein the Church-wardens are jointly concern'd to act with other Officers, or equally impow'ed with them by special Statutes.

1. They are to joyn with the Overseers of the Poor in the execution of their whole Office; for they have an equal authority and charge with them therein. The particulars we shall shew under the next Title, when we come to declare the Office of such Overseers.

2. They are to joyn with Constables in Apprehending such persons as disturb Ministers; in levying forfeitures for Swearing or Cursing, or for killing Hares, Pheasants or Partridges: As likewise for Tipling and Drunkenness, Prophaning the Sabbath, destroying Fish unlawfully; Levying twelve pence for not coming to Church every Sunday, &c.

4. They are also to joyn with Constables in making Rates for maimed Soul-

Souldiers or Mariners, and conveying Prisoners to Goal, and seizing Irish Cattel, receiving Rogues brought to them, and passing them away: In chusing Surveyors, and appointing days for working in the High-ways; chusing Scavengers in London, and levying the penalty of Five pounds upon the Parties goods that is not Buried in Woollen, according to the Act. 18 Car. 2 cap.

All which being particularly expressed in the Constables Office, to avoid vain Repetition, we thither refer the Reader.

An Appendix to the Duty of Church-wardens, concerning the destruction of Noysome Fowl and Vermine.

In every Parish the Church-wardens and six other of the Parishioners desired by the Church-wardens to assist for that purpose, shall yearly in one of the Holy-days in Easter week,

St. Eliz.
cap. 15.
14 Eliz.
cap. 11.

F and

An Appendix to the

and at any other time when it shall be needful, Tax and Rate every person having the possession of any Lands or Tithes within their Parish, to pay such Sums of money as they shall think meet, according to the quantity of their Lands or Tithes, for and towards the destruction of Noisome Fowl and Vermine: And all such as refuse, or do not pay the same within fourteen days after demand made by the said Church-wardens, or one of them, shall forfeit for every time Five shillings, which together with the sum Assessed, shall be levied by distress on such parties goods by the said Church-wardens, or one of them; the same Distress to be ordered and used as Distresses for Amerciaments in Leets.

And as well the said Rates as Penalties shall be yearly by the Church-wardens, or one of them, delivered by Bills indented to two honest substantial persons of the Parish, elected and appointed by the Church-wardens, named distributors of the provision for the destruction of Noisome Fowl and Vermine. And if the Church-wardens and six Inhabitants, or the said Distributors, or any of them, shall refuse or make

Duty of Church-wardens.

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make default in execution of this Act, or any part thereof, such Offender forfeits Five pounds for every default.

These Distributers are to pay those that shall destroy any Noisome Fowl or Vermine as follows.

For every 3 heads of { Old Crows, } 1 d.
 { Choughs, }
 { Pies or Rooks. }

For every 6 heads of { Young Crows, } 1 d.
 { Pies, }
 { or, }
 { Rooks. }

For every 6 Eggs of any of these Fowls, one penny.

For every dozen of *Stares* heads, one penny.

For the head of every { Merton, Hawes, } 2 d. and for
 { Furse-kite, } 2 Eggs of
 { Mold-kite, Buz- } them 1 d.
 { zard, Cormorant }
 { or Ring-tail. }

For every Iron or Ospreys head, four pence.

F 2

For

An Appendix to the

For the head of every *Woodwall, Pye, Jay, Raven, Kite, Kings-fisher, Bulfinch, or other Bird that spoils fruit.* } 1 d.

For the head of every Fox or Gray,
twelve pence.

For the head of every *Fitchew, Polcat, Stote, Weasel, Fair, Badger, or Wild-cat,* } 1 d.

For every 3 heads of Mice or Rats,
one penny.

For every head of a Mole, Warp, or
Want, one half penny.

All which heads, &c. shall be kept in a fitting place, and once in a Month brought forth before the Church-wardens and Taxers, or any three of them, by the said Distributers, who shall then account what money they have disbursed for the same; and then they shall be burnt, consumed, or cut asunder. And what money remains in the Distributers hands, shall be delivered over by them at their years end, to such as are chosen to succeed them. But

Duty of Church-wardens. 121

But Note, this Act shall not extend to give any Liberty or Authority to any person or persons whatsoever, to use or exercise any means or Engines for the destruction of *Crows*, *Choughs*, *Rooks*, or other the aforesaid Vermine, in any place, or places, to the destruction or disturbance of the building, or breeding of any kind of *Hawks*, *Hens*, *Eggrits*, *Paupers*, *Swans*, or *Sbovelers*, or to the destruction or hurt of any *Doves*, *Dove houses*, *Deer*, or *Warren of Conies*; Nor shall extend to give or appoint any sum or sums of money, to be given, paid or distributed to any person or persons for the heads of any *Buzzard*, *Ring-tail*, *Herne*, *Pole-cat*, *Fitchew*, or *Stote*, that shall or may be taken in any Warren, or Ground, employed for *Conies*; nor to the taking of any *Stares* in *Dove-houses*; nor to the destruction or bringing of any *Kite* or *Raven* killed in any City or Town Corporate, or within two miles of the same.

OF THE
OFFICE
AND
DUTY
OF
Overseers of the Poor.

CHAP. I.

*Of the Nature of their Office, in
setting to work the Poor, and
putting out Apprentices.*

THE Overseers of the Poor are
Officers yearly appointed to
be joyned with, and assistant to
the Church-wardens in the over-sight
and

and ordering of the Poor of the Parish, answering in nature and effect to the Office of Deacon in the Primitive Church, though now Custom has brought that word to signifie an Officer of a very different kind.

Stat. 43.
Eliz.
cap. 2.
and 3.
1 Jac.
cap. 25.
3 Car. 1.

These overseers ought to be persons of competent wealth, and a good Conscience, faithfully to perform their duty to the Poor committed to their charge, they are to be chosen and made by two or more of the Justices of Peace of the County (whereof one must be of the *Quorum*) dwelling in, or near the Parish for which they are elected, which Justices are yearly under their Hands and Seals, at *Easter*, or within one month after, to appoint two, three or four substantial House-keepers (according to the greatness of the Parish) to be Overseers of the Poor, and in default of such appointment, every Justice of that division forfeits Five pounds.

And here Note, that the Law says these Officers are to *be joyn'd with the Church-wardens to look after the Poor.*

So that 'tis plain, the Church-wardens have an equal Authority with them in the business, and may be pu-

nished if they neglect their duty herein. But if there be but one Church-warden in a Parish, it may Office: And the Overseers of the Poor, and this Church-warden may execute the Office well enough.

2. Note, That the major part of these Overseers and Church-wardens may do any thing belonging to their Office without the rest. But they ought to have the allowance of two Justices (*Quorum unus*) to every thing they do, either specially, or at least generally.

Ibid.

3. These Overseers (and Church-wardens too with them) for such of them as not hindered by just cause (to be allowed by two Justices) are once a Month to meet in the Church on *Sundays*, after Evening Prayer, to advise together concerning matters appertaining to their Office, and in the Execution to use all diligence; on pain of Twenty shillings forfeiture on every default.

Their

Overseers of the Poor:

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Their Office is chiefly to take care for setting the Poor to work, relieving them when unable to work, and setting them when destitute of Habitations, so as no Parish be unjustly charged.

1. These Officers are to set to work the Children of such whose Parents they shall think not able to keep and maintain them, and all such persons Married or Unmarried, as having no means to maintain themselves, use no ordinary and daily trade of life to get their living by; and all such likewise as can get no work elsewhere. And if any by them so appointed to work, shall refuse so to do, or to work for the wages Assessed, any Justice of Peace may send them to Goal, or the House of Correction.

Setting to work.

And the better to enable them to set such poor people at work, the said Overseers and Church-wardens, with consent of two, or more Justices (one of the Quorum) may set up, use, and follow any Trade, Myltery, or Occupation only for the setting to work, and relieving the Poor of their Parish, notwithstanding any Statute to the contrary,

Stat. 3.
Car. 1.
cap. 4.

F 5;

2 In

Poor Ap-
Prentices.

2. In pursuance of this end of their Office, they may with such consent of Justices, and ought to bind forth to be Apprentices, such Peoples Children whose Parents are unable to maintain them; concerning which Note,

Stat. 43.
Eliz.
cap. 2.
Dalt.
cap. 31.

1. That the Children so put forth ought to be above seven, and under fifteen years of Age, when they are first Bound, and they may bind the Man-child till twenty-four years of Age, and the Woman till twenty-one years of Age, or that she shall be Married, which shall first happen.

Resolution
of the
Judges.
Anno.
1633.

2. These Officers may with the Justices help compel any man within the Parish, whom they think fit, to take such a poor Child, with, or without money according to the Age of the Child, and condition of the intended Master. And if such Master and they cannot agree, then the Justices are to determine it.

3. They may put them to Weavers, Masons, and the like Mechanical Trades.

Trades, as well as to Husbandry or Housewifery; and though a man be not a Trades-man, but a Knight, Gentleman, Clergyman or Yeoman; and though he do not keep House, but be a Lodger, if he use Husbandry, Cloathing, Grasing, &c. or however his case be, if by his calling and profession he have occasion to entertain, and must use Servants of like quality, he may be compelled to take such Apprentices: Yet if he be Rich, and will live so, as to pretend he has no occasion, yet he may be forced either to take one himself, or give money towards placing him with another, all which shall not at all excuse his ordinary Assessment to the Poor.

3. If any such fit persons refuse to take such Apprentices, they may be Presented and Indicted for the same at the Assises or Sessions, upon the Statute, 43 Eliz. cap. 2. ^{Dalt.} So may the Childrens Parents, if ^{cap. 40.} they refuse to part with them, not being able to bring them honestly up, or intice them away being

being bound. And if the Children refuse to go to be Apprentices when ordered, they shall be sent to the House of Correction.

5. This putting forth to Apprentice must be by Indenture, not an agreement by words, and the Indenture must be between the Justices, Church-wardens, and Overseers of the Poor for the time being, or the said Church-wardens and Overseers, with the consent of the Justices, and the Apprentice on the one part, and him or her (if a Feme Sole) that takes the Apprentice on the other part, Thus,

The

The form of an Indenture, where a Child is put out by the Parish.

THis Indenture made the Twenty-fourth day of August, in the Twenty-eighth year of the Reign of our Sovereign Lord, Charles the Second, King of England, &c. Anno Dom. 1676. Witnesseth that W. D. and T. U. Overseers of the Parish of Cowden, in the County of Kent, and I. S. and F. K. Church-wardens of the same Town, by and with the allowance and consent of Sir I. R. Knight, and T. L. Esq; two of his Majesties Justices of the Peace for the same County, have placed, and by these presents do place and bind I. G. being a poor Fatherless Child [or I. G. Son of H. G. of the said Parish of C. Labourer, unable by reason of his Age and great Charge, to maintain and bring up his said Son] as an Apprentice with, and to G. M. of C. aforesaid, Husbandman, and

is an Apprentice with him the said G. M. to dwell from the day of the date of these presents, until he the said I. G. shall come to, and attain the Age of Twenty-four years [or if it be a Girl, the Age of Twenty-one years, or be Married, which shall first happen] according to the Statute in that Case made and provided, by and during all which time and term, the said I. G. shall the said G. M. his Master well and faithfully serve in all such lawful business as the said G. M. shall put him the said I. G. upon, according to his power, wit, and ability; and honestly and obediently in all things shall behave himself towards the said G. M. his Children and Family; and the said G. M. for his part Promiseth, Covenanteth, and Agreeth, that he the said G. M. the said I. G. in the Art and Skill of Husbandry [or what else his calling is] in the best manner that he can, or may, shall teach and inform, or cause to be taught or informed as much as thereunto belongeth, and he the said G. M. knoweth; and also during all the said term, to find and allow unto his said Apprentice sufficient Meat, Drink, Linnen, Wollen, Shoes, Stockings, Washing, Lodging, and all other things necessary or meet for such an Appren-

Apprentice : In Witness whereof, the said Parties first above-named, to these present Indentures interchangeably their Hands and Seals have put, the day and year first above-written.

Let the Church-wardens, Overseers and Apprentice Seal and Deliver one part to the Master, and the Master the other to them. And it may be convenient that the two Justices Indorse a signification of their consent on the backside.

6. Money given to put out poor ^{Stat. 7.}
Children Apprentices, is to be ^{Jac. cap.}
employed by the Corporation or ^{3.}
Parson, Constables, Church-wardens, and Overseers accordingly, on pain to forfeit every of them five Marks; and the party taking money with such Apprentice, shall give Security by Bond, to repay it at the seven years end, or within three months after : or if the Apprentice die in the mean time, then within one year after his death, so as the money may be employed for putting out of others. **7. Note,**

7. Note, That an Apprentice cannot be discharged but by four Justices at least in open Sessions, or by agreement in Writing under his Masters hand. And if the Master shall put the Prentice into Apparel, 'tis such a gift in Law, that he shall take it away, if he afterwards part with the Prentice.

CHAP. II.

The Overseers duty in Relieving and setting the Poor; making Rates, &c.

THere are three kinds of poor people.

1. Poor by Impotency, as Aged, Blind, Distracted, &c.

2. Poor by Casualty, as maimed in their lawful Callings, undone by Fire, &c.

3. Poor by Riot and Idleness, as Common Drunkards, Loiterers, Pilferers, &c.

The

The first of these are wholly to be provided for; the second, that have strength of body, but not sufficient means to maintain themselves, are to be set on work, and besides allowed some Relief proportionate to their necessities: But the third sort are to be sent to the House of Correction, there to be held to hard labour, to maintain themselves without Charging the Town.

Fathers, Grand-fathers, Mothers, and Grand-mothers, being able, and also the Children and Grand-children in like manner of every poor Impotent person, shall relieve such poor Relations, as shall be Assessed at Quarter Sessions, and forfeits Twenty shillings a month as long as he refuses: But it seems Bastard Children are not within the Law compellable to maintain their reputed Parents, nor can the Justices compel any man to do it that lives out of their County.

St. 43.
Eliz.
cap. 2.

If a poor man want a House, the Overseers by consent of the Lord of the Mannor, may erect a Cottage on the Waste, and lodge Inmates therein, notwithstanding the Stat. 31. Eliz. cap. 7. They may likewise License their poor

Ibid.

St. Jac.
cap. 7.

poor to beg within their own Parish, but not in the High-way; and any Inhabitant that serves or relieves at their door any but those of their own Parish, having such License, forfeits Ten shillings a time for so doing.

Rates,
St. 43.
Eliz.
cap. 2.

For enabling them so to relieve the helpless Poor, these Officers, or the greater part of them may raise weekly, or otherwise, of every Parson, Vicar, and other Occupier of Land, Houses, Tithes, Coal-mines, or saleable Underwoods, &c. in their Parish, such sum as they shall judge fit and necessary, which Rate or Tax must be allowed by two Justices (one of the *Quorum*) and then by their Warrant they may levy it by distress, on the goods of such as shall refuse to pay it, or in default of goods, the refuser may be committed to Prison till it be paid.

But here Note,

1. These Rates are to be made according to mens visible estates real and personal within the place only, not for any Estate they may have elsewhere, and must be only on the Tenants or Occupiers of Land, not on Landlords as such.
2. All

2. All Lands are chargeable with these Rates, which are usually set by the pound; and for stock and goods 'tis generally thought reasonable to follow the proportion of Lands; that is to say, an Hundred pound stock to be rated at five or six pound a year in Land.

If any find themselves aggrieved by any Tax, they are to be relieved at the Quarter Sessions.

These Officers to preserve their Parishes from an increase of charge, are often much troubled about keeping out and settling poor people that would obtrude upon them; wherefore observe first,

1. That forty days residence quietly St. 14. in a Parish shall be accounted a Legal Car. 2. settlement, provided it be not brought cap. 14. about by practice.

2. If any Stranger come into a Parish, in any Tenement, under Ten pounds a year, and refuse to give Security to discharge the Parish, any two Justices (*Quorum unus*) on complaint of the Church-wardens or Overseers within the forty days, may send him to the place where he was last Legally settled: And if any find himself aggrieved

grieved by the Justices, he may appeal to the Sessions.

3. Yet any person may go abroad to work in Harvest, or other employment, with a Certificate from the Minister, one Church-warden, and one Overseer, that he is in their Parish a settled Inhabitant, and in such case, if he fall Impotent after he have been in a strange place above forty days, this shall be counted no settlement, but he is to be returned to the first Parish.

Ibid.

4. Persons refusing to go, or not remaining in the Parish where they ought to be settled, may be sent by the Justices to the house of Correction.

Resolution
of the
Judges.
Sect. 24.

5. A. having Wife and Children, takes an House in the Parish of B. for one year, during which time he is illegally turned out of possession, then he takes a House in another Parish, out of which he is put within two or three days, and wanting a place to shelter him, gets into a Barn, in a third place, where his Wife is delivered of another Child: In this case, they are all to be sent to the Parish out of which they were first illegally forced.

6. One

6. One born at *S.* left that place ten years, and lived in *T.* taking a House, and paying rent there for two or three years, and afterwards left that place also for six or seven years, and then came to *W.* in another County, and there was twenty weeks at work, but becoming impotent, did wander and beg, and being taken as a Vagrant, it was ordered he should be passed and settled at *S.* where he was born.

Bul. Rep.
1. part.
fo. 357.

A. lives in a House at *B.* with his Children, but works in *C.* being hired there by the year: In this Case his Children are settled in *B.* not in *C.* in case of his death. If a Woman Unmarried be hired in one Parish, and there got with Child, and then goes into another Parish, and is there settled in Service, or otherwise, for two or three Months, and then is found with Child and delivered; in this case she and her Child shall be settled in this Parish where she is, not sent to the Parish where it was begot.

Resolut.
Judg.
Sect. 12.

Two next Justices may take order as well for the punishment of the Mother of a Bastard Child, as also to compel the reputed Father to save harmless the Parish, by allowing money weekly,

Of the Office of

weekly, and to Imprison him or her if that order be not performed ; and for better discovery of the matter , the Justices may examine the Mother her self upon Oath, concerning the reputed Father.

If B. have a Bastard Child by M. born in the Parish of D. six years since ; and the reputed Father M. Marries another Woman, and they keep the Child the six years in another Parish, called N. and the Mother of the Child continues all the while at Service a single Woman, and then the reputed Father dies poor : In this case the Bastard-child is to be sent to the Mother first, if she be able to maintain it ; if not, it must be kept by the Parish of N. where it was so many years settled with the Father.

St. 43.
Eliz.
cap. 2.
Dalt.
cap. 40.

Lastly : These Officers , as well Church-wardens as Overseers are to be assisting to the Constables where they are required by some special Statutes, as for suppressing of Conventicles, for which see before in the title Constable: And within four days after their year ended, and others chosen, they are to make a true account to two Justices, of what money they have received and dis-

disbursed, what Wares they have in their hands, or in the hands of any of the Poor; what Prentices they have put out, &c. And what is so remaining, shall pay over to the new Overseers; if they refuse to account the Justices may send them to the Goal; if after they have accounted, they refuse or fail to pay over the money in their hands to their Successors, the same may be levied on their goods by distress; and in default of such distress, the refuser to be sent to Goal, there to remain till payment and delivery of such Arrearages and Stock.

Di-

Directions for Surveyors of the High-ways.

Surveyors, or rather Suprevisors of the High-ways, or Way-wardens, as they call them in some Counties, are Officers yearly appointed to look after the necessary reparation of the High-ways within that Parish or Precinct for which they serve.

St. 14.
Car. 2.
cap. 6.

They are to be chosen on *Munday* or *Tuesday* in *Easter* week, by the Church-wardens, Constables or Tithing-men for the time being, with the advice of the major part of the Inhabitants, and are to be two or more in number, according to the greatness of the Parish, and being chosen, must have notice thereof given them in writing by the Constables, &c, the next *Sunday* after.

2 & 3. P.
& M.
cap. 8.

Immediately after such notice, they are to take this Office upon them, on pain of forfeiting Twenty shillings: In the execution whereof note,

1. That

Overseers of the Poore.

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1. That they have to do with no ways, but the publick High-ways, called in Latine *Vie Regie*, the Kings High-ways, for so says the Statute, High-ways leading to Market Towns, &c.

2. The Constables and Churchwardens, when they chuse Surveyors, are to appoint six days between that and *Midsummer* to be set apart for amending the High-ways, whereof next *Sunday* they are to give publick notice in the Church, and then the Surveyors are to see the same done and observed, that all Parishioners do their work those days in manner following.

1. Every one having a Plough-land (which is counted as much as one Plough may plough in a day) in Tillage or Pasture in the Parish, or keeping there a Plough or Team, shall come forth with one Wain or Cart fit for carriage, provided with Tools, Oxen, Horses, &c. according to the manner of the Country, and two able men who are to work in such manner as the Surveyor shall direct, eight hours in every of these six days,

G

on

Of the Office of

on pain of forfeiting Ten shillings for every default.

2. Every other Householder, Cottager and Labourer in the Parish, being able to work, and not a Servant hired by the year, must come out himself, or provide some able man to work all the six days, on pain of forfeiting twelve pence for every default.

St. 18.
Eliz.
cap. 9.]

3. Persons that have no Carts, if they be in subsidy Five pounds in goods, or Forty shillings in Lands, or above, must find two able men.

If the Surveyors shall think any of the Ploughs or Carts needless any of the days, they may spare them, and instead thereof, require two able men who must come under pain of forfeiting twelve pence a man for every default.

Above six
days.

Every Parish is bound to repair their High-ways, and if they be defective, may be Indicted at the Common Law; wherefore if six days will not serve, the Surveyors may appoint more, and charge all persons chargeable to come to work; and if he who is to send a Team

Team, neglect, he forfeits Ten shillings, and the Labourer Eighteen pence for every day: But for all such days above six, the Surveyor is to pay them, wherein if they cannot agree, the next Justice out of the Parish is to determine it. St. 14.
Car. 2.
cap. 6.

Surveyors may take and carry away so much Rubbish and small broken Stones already digged out of any mans Quarry within the Parish, without the owners leave as they shall think fit, or gather loose Stones in any mans ground, but may not without leave dig for new Stones, nor take great Stones already digged: They may likewise dig for materials in probable places, as Sand, Stones, Gravel, &c. So as it be not in Houses, Gardens, Orchards, or Meadows of any man, nor may they make a Pit [above ten yards in breadth or length; and they are to fill it up again at the Parish charge, or forfeit Five marks to the owner. St. 5.
Eliz.
cap. 3rd

If there be not sufficient in the same Parish, they may so dig in the next Parish, under the limitation aforesaid, without paying any thing for the said Sand, Gravel, &c. only damages for spoiling Grass by carriage. St. 14.
Car. 2.
cap. 6.

St. 5.
Eliz.
cap. 15.

Where any Watercourse shall be in any Ditch or Ditches of the Highways Annoying the same, it shall be lawful for the Surveyors to turn the same into any mans ground as shall seem most convenient.

Ibid.
St. 18.
Eliz.
cap. 10.

Owners of Grounds adjoyning to the High ways, not keeping their Hedges low, and cutting down Trees and Bushes growing over the same ways, forfeit Ten shillings. And he that scours not the Ditches next adjoyning to the ground that is next to the High-way, that the Water may pass the better out of High-way, shall forfeit Twelve pence for every Rod.

Any person scouring Ditches, and throwing the soil into the High-way, or laying Dung there, and suffering it to lie there six months, forfeits for every Load Twelve pence.

If the Surveyors neglect to present these offences within one month after they shall be committed they forfeit for every default Forty shillings.

14 Car.
2. cap. 6.

No hired travelling Wain, Waggon, Cart or Carriage, (other than Carts im-

employed about Husbandry, and carrying home Harvest, or in his Majesties Service) shall be drawn, or go with above seven Beasts, whereof six shall go double or in pairs; nor with above eight Oxen, or six Oxen and two Horses, nor shall carry above two thousand pound weight between *October* and *May*, nor above three thousand pound weight between *May* and *October*, on pain of forfeiting Forty shillings, one part to the Surveyors, the other to the Overseers, and the third to the Prosecutor; to be levied by distress on the Cattel; and in case the Penalty be not paid within three days, to be sold, returning the overplus, charges of keeping and selling deducted.

Surveyors of the High-ways within one month after their year is out, shall give a true account to the Parish or Hamlet at some publick meeting appointed for that purpose, of all monys by him paid and received, and what moneys are in Arrear for Fines or Penalties. And what remains overplus in his hands, he shall pay over to the next Surveyor. And if he refuse so to account, the Justices may commit him.

In *London* the Scavengers seem to supply the places of Surveyors in some measure, whose Office consisting in keeping the Streets clean, carrying away dirt, &c. is partly settled by the Stat. of 14 *Car. 2 cap. 2.* and partly by the custom of the City.

An Appendix concerning Bridges.

'Stat. 22.

H.8.cap.5

Where a common Bridge is decay'd in the Kings High-way, and it cannot be known who, or what Lands are chargeable to repair the same, four Justices of the Peace (*Quorum unus*) may within their limits call before them the Constables, or two of the most honest Inhabitants of every Parish within their City, or Town Corporate, wherein such Bridge is, and with their assents may Tax every Inhabitant such reasonable sum as they shall think convenient towards repairing such Bridge, and repairing the High-ways for three hundred foot next the ends of any such Bridge, which Tax must be particular, and not

not so much on a Hundred or Town, for then some few might be distrained upon for the whole.

The said Justices may appoint Collectors to gather such Taxes, and Surveyors to see the work done, both which Officers, and their Executors, and Administrators, shall truly account to the Justices, to be proceeded against at the General Sessions.

If a Bridge be wholly in a City or Town Corporate, such City or Town must repair it; if it be out of any such City or Town, the whole County by common right is to repair it: And if part of a Bridge be in one County, and part in another, both shall contribute so far as it is in their limits respectively.

Such as are chargeable to repair a Crompt. Bridge, may enter on any other mans 186. Ground adjoining, and lay their materials there, and the Owner shall have no Action, because it is *in Commune bonum*, for a common advantage.

All Bridges shall have sufficient Walls ^{14 Car.} or Posts, and Rails on each side four ^{2. cap. 6.} foot high at least, from time to time, to be kept sufficiently repaired.

*As a Corollary to the whole
we shall briefly set down
the chief Duties requi-
red by our Law, of Mi-
nisters, Parish Clerks,
Treasurers of the Coun-
ty Stock, Governours,
of Fairs, &c.*

And first, of the Parson or Cu-
rate.

Not to meddle with his Function
as 'tis Spiritual, he is besides,

To Register the Testimonial of eve-
ry Servant, at his going from his
Service, for which he may take two
pence.

He is to be present to aid the Con-
stable when Rogues are whip'd, to
Register the same, and send a Testimo-
nial with them afterwards, on pain of
Five shillings for every default.

He

He hath power to License any to eat flesh on days prohibited in the time of their sickness, and for Registering the same in the Church Book, he is to have four pence, &c.

Parish Clerks.

A Parish Clerk is a Lay-Officer of a Parish, whose duty is to attend upon the Minister and Church-wardens about holy things.

He is to be chosen according to the custom of the place, if usually the Parish have chosen him such election is good, notwithstanding any Canon; and therefore in such case, if the Minister of the Parish, and the Bishop or Chancellor of the Diocese chuse another, the first shall stand.

Hughes.
Rep. 5.
Cand. and
Plom.
Case.

The Parson of a Parish cannot put a Clerk so chosen out of his place, without just cause, nor interrupt him; if he do, he may have an Action against him, as any other man that is disturbed in any Lay-Office.

March.
Rep. 107.

Of the Office of

His Office consists chiefly in setting the Bread, Wine, and Cups decently on the Communion Table, providing Water for Christening in the Font, making clean the Church, putting the Bible and Common-Prayer Book in their places for the Minister, reading the peoples part of the publick Prayers, beginning the Psalm, Ringing the Bells, &c.

If any Parishioners with-hold his Wages, he may be relieved by Warrant from two Justices of Peace, who may order payment, and in default, order distress as hath been by some affirmed. But *Quere* now, for we suppose he must proceed according to the custom of the place,

Treasurers of the County- Stock.

These Officers are appointed by the Sessions, and ought by the Statute to be Subsidy-men, of ten pound a year Lands, or considerable personal Estate, and are annually changed.

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Overseers of the Poore.

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The Justices in Quarter Sessions charge every Parish so much towards relief of maimed Souldiers and Mariners, or of the Prisoners in the *Kings Bench* and *Marshalseas*; which being Assessed by the Parishioners amongst themselves, the Constables and Churchwardens are to levy it, and pay it to these Constables, who must deliver it to these Treasurers, who out of it are to relieve such maimed Souldiers and Mariners, and give a just account to the succeeding Treasurers.

See St. 43.
Eliz.
cap. 3.
and 14.
Car. 2.
cap. 9.

Governours of Fairs and Markets.

They must appoint a Toll-keeper to attend from Ten a Clock in the Forenoon till Sun-set, on pain of Forty shillings for every default on every Fair or Market day.

Such Toll-keeper may take due and lawful Toll for every Horse, Mare, &c. And the parties to every bargain or exchange, must be present

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sent at taking such Toll, and also the said Horse, Mare, &c. And the Toll-keeper must Write down the Namer, Sur-names, and dwelling places of all the said parties, and the colour and mark of the said Horse, Mare, &c. on pain of Forty shillings.

31 Eliz.
cap. 12.

And if the Seller be unknown to such Toll-keeper, he is to bring one credible Person that is well known to him, to Vouch his knowledge of the Seller, whose names are both to be entred, with the marks and price of the Horse or More, of which the Buyer may, if he please, have a note subscribed with the Toll-keepers hand; paying for the same, two pence: Every Toll-keeper suffering such Sale without such Voucher, and every Voucher giving false testimony, forfeits Five pounds, and the Sale to be void.

If a Horse Stolen be legally sold with Vouchers, the Owner may redeem him within six months after Sealing, proving the Horse to be his, and repaying what the Buyer shall

Overseers of the Poore.

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shall Swear before a Justice, he paid for him; but if he be not sold openly in Market overt, and Toll'd and Vouched, the Owner may seize or Replevin him wherever he finds him.

THE

THE
OFFICE
AND
DUTY
OF A
London-Constable.

THough the Office of Constables in *London* be of the same nature, and directed by the same Statutes we have recited under the several heads of their duty: Yet since there is some variation, not only in the manner of their Election, but likewise in the form of their Oath, as it is usually Administred: We shall here (because nothing

thing of it is yet extant in any treatise of this nature) treat briefly of a *London* Constable, not intending to repeat all the aforesaid branches of his Office in common with others throughout the Realm, but set down only some particularities wherein by Custom they differ, or to which by Acts of Common Council, &c. he is specially obliged.

1. No man can be a Constable in *London*, unless he be a Freeman of the said City; and whoever is so, is obliged to put up the Kings and City Arms over his door; or if he live in an Alley, at the end thereof to the Street, to signify a Constable lives there.

2. The whole City being divided into twenty-six Wards, every Ward is sub-divided into so many Precincts, each of which has its proper Constable.

3. The manner of making Constables here is thus: The Parish or Precinct present, or nominate, some of their Inhabitants as fit for this Office in the Vestry, then at the Wardmote, which is always held on Saint *Thomas's* day, the person so presented, is either confirmed, or for some good reasons, gets off, and another is appointed in

his

Calthorpe
Rep. p.
129.

The Office and Duty of

his stead, so that the Election of Constables may properly be said to be in the Wardmote, and then such persons so ratified in the several Wardmotes for the whole City, are to appear at the general Court of Aldermen, to be holden in the *Guildhall*, on *Munday* next, after the Feast of the *Epiphany* (or *Twelfth-day*, as 'tis usually called) next coming, where they are Sworn.

The Form of the Oath there Administred to them, being as follows.

YOU shall Swear that ye shall keep the Peace of our Sovereign Lord the King, well and lawfully to your power: and you shall Arrest all them that make Contest, Riot, Debate, or Affray in breaking of the said Peace, and lead them to the House or Counter of one of the Sheriffs, and if ye be withstood by strength of misdoers, you shall rear on them an out-cry, and pursue them from Street to Street, and from Ward to Ward till they be Arrested: And ye shall search

at all times (when ye be required by the Scavengers or Beadles) the common noysance of your Ward, and the Beadle and Raker you shall help to rear and gather their Salary and Quarterage, if you be thereunto by them required: And if any thing be done within your Ward against the Ordinance of this City, such defaults as ye shall find there done, ye shall then present to the Major and Ministers of the City. And if ye be letted by any person or persons, that ye may not duly do your Office, ye shall certifie the Major and Common Council of the City, of the name or names of him or them that so let you.

Ye shall also Swear, that during the time that ye shall stand in the Office, and occupy the room of a Constable, ye shall once at the least in every month, certifie and shew to one of the Clerks of the Majors Court; and in the same Court, as well the Names as Sur-names of all Free men which ye shall know to be Deceased within the Parish wherein ye be Inhabited, as also the Names and Sur-names of all the Children of the said Free-men so deceased, being Orphans of this City. And thus you shall not leave to do, as God you help.

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4. It hath sometimes been practised to admit persons nominated for Constables, to Fine themselves off, but this seems rather by Connivance or favour for some particular reason than *De Jure*. But it is frequently allowed that the person chosen may hire a Deputy (fit and duly qualified for that purpose) to execute and serve the Office for him, and in that case such Deputy is to be Sworn, and must answer for defaults as aforesaid.

5. Though Constables in *London*, are chosen every one by and for some particular Precinct, yet he has power to serve Warrants, and execute his Office throughout the whole City, if required.

6. Therefore as to Watching a Nights at the Gates, &c. There are in every Ward so many Watchmen ordered by Act of Common Council. And by Custom all the Constables in each Ward attend successively, one every Night, according to his turn, to go the Rounds, and look after all other things belonging to his Office.

7. Note, Watching being a personal duty, every man is to serve therein,
and

and the Constable and Beadle ought every Night to warn in so many of his precinct as he ought to have; and, 'tis said, may insilt upon a Mans coming forth in his own person, without very just cause shewed to the contrary. But commonly for those that do not appear themselves, the Constable hires men, wh^m the said parties respectively must pay by the Quarter, or otherwise, six pence a Night, more or less, according to custom; and if they refuse, the Lord Major will compel them.

8. By the Articles of the Wardmote- Dalt.
Inquests, it appears that every Consta- Rep. 13
ble is from time to time to certifie to such Inquest, the Name, Sur-name, Dwelling place, Profession, and Trade of every person who shall newly come to dwell within his Precinct, that they may keep their Roll perfect. And therefore the Constable is to make and keep a perfect Roll in like manner. As also once a month to search & inquire what persons be newly come there to lodge or sojourn. And if he find by their own confession, or by the Record of any of the Books of any Alderman of the City, that such new comers are Indicted,

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dicted, or cast out of any other Ward for evil and noyous life, and will not find Sureties for their good Abearance, both they and their Landlords, or receivers are to be warned that they depart; and if they refuse, they may be Imprisoned, and their Landlords Fined as much as he was to have by the year, for such House or Room.

Act of
Comm.
Counc.
Anno.
30 H. 8.

If any persons in great Rains, or other times, sweep the Soilage or Filth of their Houses into the Channel, and the same is after conveyed to the *Thames*; every person so offending shall forfeit Twenty pence, and upon complaint made to any Constable next adjoining, it shall be lawful for him to distrain for such forfeiture; and the like penalty to be paid by every person that burns Rushes or Straw in his House, or that washes in the common Streets or Lanes; the one moiety to the Major and Commonalty, the other to be divided between the said Constable, and the party finder of the said default; and every Constable refusing or neglecting his duty herein, forfeits for every default Three shillings four pence.

Anciently the Citizens of *London* had

had a House called the *Tun* in *Cornhil*, whereunto the Constables, Beadles and other Officers were to bring Trespasgers against the Peace, and persons found in Adultery, Fornication, or under suspicion thereof. But now the *Counters* and *Bridewel* are appointed receptacles for such offenders.

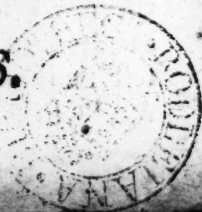
'Tis said that a Constable by the custom of *London*, taking any person upon his Watch abroad, after ten a Clock at Night, may send them to the Counter till Morning (which will cost them at least a dozen shillings) But this seems *durus sermo*, part of *summum jus*, which equity counts *summam injuriam*, where there is no breach of the Peace or other offence committed. This is certain, that as a Constable ought not to betray his trust, debase the Kings Authority committed to him, nor neglect his duty in examining, suppressing and securing all dangerous unruly persons, or such as by reasonable probabilities appear suspicious and guilty of ill designs; so ought he by no means on the other side, to wreck a private grudge, or gratifie a vain itch in himself of shewing his power to the utmost, for then he ostentimes goes beyond

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yond it; and thereby some pragmat-
cal men in Office have involved them-
selves in after troubles. And though
we have herein before particularly de-
clared our sentiment touching a Con-
stables discharging a verbal commit-
ment upon good cause after appearing,
somewhat contrary to the vulgar con-
ceit; yet we would not have any Offi-
cer run an hazard on our single private
opinion in a controverted point, but
rather advise him to this safe and sober
course: To examine the party with
deliberation, and hear the whole mat-
ter without passion, before he pro-
nounce any positive words or order of
Commitment, and then if he find just
grounds for the same, to send him a-
way to rights without hearkening to
any after-parley or intreaties; or if he
do, That then he take a General Re-
lease from the party for his security a-
gainst any Action of false Imprison-
ment that may happen to be brought.

Nimia Cautela non nocet.

F I N I S.



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